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ABSTRACT

This report contains a variety of selected materials related to different aspects of collective negotiations in public education. Special reports written by leading experts in the field comprise the first section. The second section contains three chapters that are complete texts of a commission report and the proposed statutes covering educational negotiations. For additional readings on collective negotiations see EA 004 337, Volume II of this study. (Author/JF)

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Readings
in
Public School Collective Bargaining

Volume 1

EA 004 336

EDUCATIONAL SERVICE BUREAU, INC.
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Introduction

This volume contains a variety of carefully chosen materials related to different aspects of collective negotiations in public education. The first section is comprised of special reports written by leading experts in this field, and the second section contains three chapters which are complete texts of a commission report and proposed statutes covering educational negotiations. All these documents are basic reading for anyone who would profess knowledgeability in educational negotiations.

References in certain chapters to "ENS" denote Educators Negotiating Service, a division of Educational Service Bureau. Most references to dates and locations are left as they originally appeared.

Part I

1

Collective Bargaining And Public Employees

This chapter is an address by Arvid Anderson, Chairman, Office of Collective Bargaining, New York City. Mr. Anderson spoke before the Second Annual Conference on Law and Public Education at the University of Georgia, Athens, Georgia.

What can a Yankee from New York City, with all its problems, possibly say about collective bargaining that has any meaning for Georgia School Board members, administrators and teachers?

The growth of public employee collective bargaining is one of the most significant social and political developments of our time. In time, I believe it will have as great an impact on our political structure and educational policies as the one-man,one-vote decision and the desegregation of the public schools. The direct involvement of teachers through collective negotiations in the management of our schools has been characterized as a revolutionary development.[1]

I want to make clear that my current duties do not now include jurisdiction over teachers in New York City. That is the responsibility of the New York State Public Employment Relations Board. The results of agreements negotiated this year by the New York City Board of Education and the Teachers Union, and between the Board of Higher Education and the Legislative Conference, has had, and will continue to have, a profound effect upon the entire school scene. The major improvements negotiated in salary schedules for teachers at the elementary, high school and college levels are a milestone in the struggle to elevate teachers' pay to professional levels.

In New York City schools, the B.A. hiring rate for this fall is $7,950 and goes to a maximum of $12,150 on an eight-year schedule. The M.A. hiring rate is now $9,450 and goes to a maximum of $13,650. In October 1971, the B.A. hiring rate will be $9,400 and the maximum $13,950. In October 1971, the M.A. hiring rate will be $10,900 and the maximum $15,450. For instructors at the City University the hiring rate this year is $11,005 with a maximum of $14,855. In 1971, the hiring rate will be $12,700 with a maximum of $17,150. The beginning salary rate for full professors this fall is $19,620 with a maximum of $27,900. In the fall of 1971, the beginning rate will be $22,500 and the maximum $31,275.

For some five years, prior to going to New York, I was directly involved as an administrator of a Wisconsin collective bargaining statute which included bargaining rights for teachers. During this period I received an education in the problems of teachers and administrators.

One of the lessons I learned in Wisconsin was that there was a semantic barrier in education to understanding what the collective bargaining business was all about. We learned to use the term "professional negotiation" to describe collective bargaining. The term "union" was anathema to some administrators, but the term "professional associations" was accepted. The term "seniority" was unfamiliar, but the term "length of service" was in the lexicon of school administrators. The term "grievance" was not accepted, but the term "complaint procedure" was accepted. Union shops were illegal, but compulsory attendance at teachers' conventions as a condition of employment, as a basis of payment for the days involved, was not considered illegal. Eventually we learned that, whether we called it negotiations or bargaining, we were really talking about a procedure in which teachers had something to say about how our public resources for education were allocated. In essence, what the bargaining business is all about is: Who Gets How Much, and When?

The decade of the 1960's has been a period of debate over whether there should be collective bargaining for public employees. While the debate is not yet over, particularly over the question of whether public employees should have the protected right to strike, the evidence is that collective bargaining is here to stay in most parts of the nation. At least thirty states presently have laws which in some degree endorse and protect the right of some or all state and local employees to bargain collectively.

At least twenty states have statutes covering teacher-school negotiations.[2] More than one million teachers in public school systems now have teacher-school board agreements, according to a recent NEA survey.[3] Bargaining is not limited to the states which have employment relations statutes for public employees. There are only five states - Alabama, Georgia, Hawaii, Louisiana and Mississippi - which have no reported negotiation agreements in any school system. In Hawaii the situation is expected to change soon, because the new Constitution protects the right of public employees to bargain.

In North Carolina and South Carolina, less than 5% of the teachers are in school systems with negotiated agreements.[4] While the six southern states mentioned, which do not have teacher agreements, may indicate that teacher bargaining or the absence of bargaining is a regional phenomenon, the record in education and other occupations speaks otherwise. Virtually every state has had some public employee disputes, whether it is firemen in Atlanta, hospital employees in Charleston, or sanitation workers in Louisiana. Those of you who believe it can't happen here, or that it only occurs in big cities, may be right, but I wouldn't count on it. Bargaining was largely unknown in public employment a decade ago. It is moving rapidly and I suggest it can happen here.

The record of public employee unrest also tells us that the absence of statutes protecting the negotiating and bargaining process has not meant the absence of public employee disputes, but only the absence of orderly procedures to deal with such problems. Thus, I feel it is fair to say that for most of the nation, albeit with exceptions including the state of Georgia, the debate is really over whether there ought to be collective bargaining for public employees, including teachers. There is such bargaining de jure and de facto throughout the land.

State or Federal Law?

The real question as we enter the 1970's will be whether state and local governments will develop orderly procedures to deal with public employment collective bargaining, or whether this task will be taken over by the federal government. The United States Supreme Court in Maryland vs. Wirtz,[5] reaffirmed broad federal authority under the commerce clause to regulate the conditions of employment in state and local schools and hospitals. As a result, the two largest public employee organizations have this year advocated federal legislation to fill the vacuum now existing in state and local laws. The National Education Association and the American Federation of State, County and Municipal Employees have urged the Congress to create a federal regulatory scheme for state and local laws if such laws met minimum federal standards.[6]

The Education Commission of the States, which is the spokesman for State Education Commissioners, has drafted a model bargaining law which can be adopted by the various states.[7]

We have witnessed the intervention of the Department of Labor and the Federal Mediation & Conciliation Service in several local public employee disputes where no state or local mediation services were available to fill the need. Federal courts are upholding the constitutional right of public employees to organize and have even ordered the reinstatement of a teacher fired because of union activity.[8]

The Advisory Commission on Intergovernmental Relations, under the Chairmanship of former Florida Governor Bryant, has just completed its year long study of "Labor Management Relations in the State and Local Public Service".[9] Its report recommends that state governments should require all state and local agencies to pass "meet and confer" legislation which provide for the use of specific procedures, including fact finding, mediation and advisory arbitration, to resolve impasses in public employee disputes.

All of these developments say loud and clear - the hour for state action is late, and that if the states fail to act, Uncle Sam will do the job for you. The handwriting is on the wall, and I think most states would want to act positively to create their own orderly procedures for resolving disputes with their own employees.

I'm not trying to paint the federal government as any kind of an ogre. I'm persuaded that a federal law for state and local bargaining could work. There are many able professional people in the Federal Mediation & Conciliation Service, the Department of Labor and the National Labor Relations Board who can do the job. My point is that I prefer state action, and I think is is time for those who talk about states rights to step up their responsibilities. In short, the states should enact collective bargaining laws for their public employees, including teachers, with appropriate safeguards for the rights of school administrators and the public.

The acceptance of the idea of collective bargaining, or collective negotiations, if you prefer, does not have to await the enactment of a state or federal negotiating statute. Normally, negotiations can be conducted without express statutory authority as long as there is not express prohibition of such bargaining.

But is bargaining a good idea? The record is that teachers have obtained more benefits from collective negotiations than teachers without bargaining rights have received unilaterally from school boards. The "more" consists of more salary, improved working conditions and the right to co-determine certain education policies.[10] Whether this is good for school boards, administrators and the public may be debated. However, improved salary levels have clearly helped in recruiting and retaining qualified teachers and have also helped push up the salaries of principals and administrators.

In New York City for the first time in years there is a waiting list for teachers, a fact which is largely attributed to the substantially improved minimum hiring rate. The New York City contract contains the first modification of the tenure system by providing for the possibility of dismissal of teachers for incompetence even after tenure has been granted. The agreement calls for developing "objective criteria of professional accountability". How effective the improved salaries, the "more effective school program" and the removal procedures will be in improving the quality of education will have to await the passage of time.

During my twenty years experience as an administrator and mediator of labor disputes, I have noticed a marked difference in how private and public employers react to the collective bargaining process. The private employer feels he is free to take any action he wants to in employment relations unless the law specifically prohibits him from acting. Whether he wants to take a particular action is another matter, but the right to act is there. The public official, school superintendent, mayor, or corporation counsel is all too often inclined to believe that he can only take action in employment relations if he is expressly authorized to do so.

For example, the City of Memphis this year concluded a three-year collective bargaining agreement for 1400 sanitationmen. It is labeled a "Memorandum of Understanding", and contains a savings clause, which seeks to validate the remainder of the agreement, if any part thereof should be held to be invalid.[11] What a difference a year makes! I'm sure you recall the statements the previous year that bargaining wasn't legal. What a sequel to the tragic events which took the life of Dr. Martin Luther King.

The City of Charleston, after repeatedly declaring that it could not legally negotiate with a hospital union, did so. My point is that events are likely to supplant traditional legal obstacles to necessary social changes. What I urge my lawyer colleagues and public officials to realize and accept is that the fact of collective bargaining for public employees is going to require the public official to think anew, and to act anew, to meet the challenges of adapting public employee bargaining to our existing legal framework, or to recommend the necessary changes in our laws to bring this about. I do not argue for a moment that serious legal obstacles do not exist in many jurisdictions to accomodating collective bargaining concepts to state and municipal laws. Obviously many such constraints exist; but lawyers and public officials can figure out how to get things done as well as how not to take action. I understand that the Attorney General of Georgia has issued an opinion under which school boards may bargain with teachers and another that the state highway department cannot prevent its employees from joining a union.[12]

Acceptance of the concept of collective bargaining does not obligate the public employer to accept any and every legislative or contract proposal advanced by public employee organizations. But careful consideration and participation in the legislative and bargaining process will afford the public employer an opportunity to participate creatively and positively in the development of policies, rather than risking the imposition of terms and provisions which later prove onerous.

Some of the critical questions posed by the fact of collective bargaining are:

Should public employees, including teachers, have the right to strike?

Whether strikes are prohibited entirely or not, what penalties should be provided for violations?

Should there be a state law, local law, or federal statute?

Should there be a regulatory agency to determine questions of representation, including the question of exclusive bargaining units?

Should there be a separate agency for education?

What is the appropriate bargaining unit? Should principals be extended bargaining rights?

Who should represent the school board in bargaining: the superintendent, members of the board, and outside counsel?

What should be the scope of bargaining, and how should disputes over the subject matter of bargaining be determined?

What should be the relationship between the education law and collective bargaining?

What should be the relationship between budget dates and the bargaining process?

What should be the method of resolving impasses? - fact finding with recommendations, or binding arbitration, or strikes?

These are some of the more fundamental questions with legal, fiscal and political implications which need to be answered. Time will permit consideration of only a few in this paper.

The Strike Question

The continuing debate over whether public employees should or should not have the right to strike has been an obstacle to the consideration of constructive proposals in some jurisdictions to deal with the causes of strikes, such as strikes for recognition, which are virtually unknown in the private sector. While I believe a persuasive argument can be made for or against the right of public employees to strike, I do not accept the argument that it is impossible to have collective bargaining in public employment without the right to strike. I can't buy the argument that the strike or strike threat, legal or illegal, is the only equalizer, the *sine qua non* to make bargaining work in public employment. Of course, the strike threat exists in numerous public employee negotiations even though the strike is prohibited, and it would be foolish to ignore it. Neither do I endorse the idea that stiff, fixed, unworkable penalties are the easy answer to public employment strikes.

My argument is that there are hundreds of collective bargaining agreements being reached in the public employment today, including education, without the right to strike and more importantly, without any meaningful threat of a strike.[13] How and why? Where strikes have been prohibited by law, fact finding with public recommendations has been provided as an alternate dispute settlement procedure. Nearly 500 fact finding proceedings have been studied in the states of Connecticut, Michigan, Massachusetts, New York and Wisconsin and the results show that the recommendations have been accepted or contributed to a settlement in the vast majority of instances.[14]

Fact Finding

The fact finding process is one of adjudication as well as adjustment. It is concerned with the equities as well as the acceptability of the recommendations. The fact finding process rests on the premise that the decisions covering the terms and conditions of employment are essentially political rather than economic decisions and, therefore, a system of impasse resolution based on informed persuasion, a concept that should have appeal to educators, is more appropriate than the strike weapon, which is primarily an economic weapon.

Of course, there are shortcomings to the fact finding process, and I don't claim it to be the ultimate panacea for public employee dispute resolution, but I do claim that the record to date demonstrates that reason can be as effective a tool as muscle in dispute solving; that the power of persuasion can be as effective as the persuasion of power.

Administrative Agencies

Experience to date in both the private and public sector labor relations demonstrates that good laws ably administered can be of immense value in aiding the negotiating process. Obviously bad laws or poor administration can harm the process. As one who has had experience in the administration of both a private and a public sector statute, I make no argument that one system is vastly superior to the other. I realize that there are many who believe the problems of education are unique and require a separate administrative agency to deal with teacher-school board relations. While as a general proposition I do not share that view, it would be presumptive without an understanding of local political and legal factors to make an argument for or against a separate negotiating law for teachers.

I do respectfully urge that consideration be given, by any state or locality contemplating a public employment statute, whether dealing only with education or with all public employees, to the tripartite procedures in New York City. The Office of Collective Bargaining in New York City is a tripartite agency created by law as a result of an agreement between the City and approximately 70 unions representing its employees. It is a seven-member board composed of two labor representatives chosen by the various labor organizations; two city members designated by the Mayor and three neutral members. The City and the two labor members, in turn, unanimously elect the three neutral members. The salaries and expenses of the neutrals are paid one-half by the unions and one-half by the City. Tripartite system applies to the selection of mediators, arbitrators, and impasse panel members who are fact finders. Only persons unanimously approved by the City and labor members have served on the panels. The parties share the cost of their services. The right of the employee organization to participate in the dispute settling mechanism has been a major factor in contributing to the acceptance of the decisions of our tripartite agency, and of the recommendations of both the employer and employee organizations.

In the absence of statutory procedures, the American Arbitration Association's National Center for Dispute Settlement has been helpful and effective in conducting elections and resolving public employee and community disputes.

Unit Determinations

The determination of the appropriate negotiating unit is a critical issue in education as it is in any area of public employment. For example, I believe that an appropriate bargaining unit would consist of all of the schools in a school district, not just the elementary schools or only the high schools. The question arises as to whether or not principals or assistant superintendents should be in the bargaining unit. It is my own view that those persons who are paid primarily for supervising other employees and not for teaching should not be included in the same bargaining unit as employees who may supervise. Whether or not supervisors should be allowed to bargain separately in any unit or excluded from bargaining altogether is a question to be decided in each jurisdiction based upon the size of the district and other factors. The reason is that someone must represent school management at the bargaining table and in the administration of the contract. I have often heard educators debate the role of the superintendent, with some arguing that the superintendent should take a middle road between the school board and teachers. I would find this a most unsatisfactory position. People who stay in the middle of the road get run over. The determination of employment policies and the satisfactory conclusion of teacher negotiations, in my view, is a major responsibility of school administration and properly belongs in the Office of the School Superintendent. Whether or not the superintendent should personally negotiate is another matter; but the responsibility should be in his office.

Scope of Negotiation

What subjects are negotiable? The major issue at the collective bargainable table in the public sector is the same as it has been in private employment for years. It is "more": more wages - and more fringe benefits. But the advent of collective bargaining in public employment, and particularly in education, has brought a demand for co-determination of some matters of educational policy, whether described as a "more effective school program" or under some other label. Teachers want to have something to say about their profession and educational policy. This can relate to issues concerning class size, the school calendar, curriculum and other matters which involve educational policy as well as conditions of employment.

Wise administrators consult with their teachers as to whether the new math, the new science courses, or the music program are meeting the needs of the students; but consultation is different from negotiations. It is important that school boards and teacher groups have a means of resolving disputes over what is negotiable as well as the issues in negotiations. This can be done by giving to an administrative agency, to arbitrators, or a court, the responsibility of determining whether a particular demand falls within the scope of bargaining. In New York City, it is the responsibility of the bargaining, prior to the disputed issues being submitted to an impasse panel for their recommendations.

Authority to Bargain

One of the most difficult problems to resolve in public employment is the authority of the public employer to bargain. What is needed is a representative of the public employer who can say, "I will or I won't," rather than, " I can't," at the bargaining table. The statement of "will or won't" refers to an effective recommendation to the ultimate authority, whether that be the school board, city council, or some other public agency. If the public negotiator is not clothed with such authority, public employee organizations will persist in their bargaining efforts, until such time as they find a place where the buck stops, be that the school board, city council, the Mayor's office, the state legislature, or the governor's office. As stated earlier, it is my feeling that the authority to bargain ought to be in the Office of the Superintendent, but special laws and political circumstances may make such designation impractical. That is a problem to be resolved at the local level or by state law.

Education Law v. Bargaining Law

A new negotiating procedure is likely to develop some conflicts between existing statutes and regulations. It would be wise if legislation could establish the relationship between an educational law and a negotiating statute, between a merit system and a collective bargaining system as a means of resolving disputes in public employment. In the absence of such procedures, efforts will have to be made to accommodate one set of procedures to the other.

Summary

I have attempted to outline some of the developments which have taken place in public employment and especially in education as it relates to public employee bargaining. What has happened in more than 40 states is likely to happen in Georgia. The education community has a choice to make as to how it will meet the demand for bargaining. There are those who will resist such change as undesirable. To others, public employment collective bargaining will present an opportunity to develop procedures for orderly social change, and with it, an improved educational system.

I hope that the educators in this audience will choose the opportunity to play a constructive role in the creative struggle to make public employment bargaining work in the interest of all of our citizens.

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1 Donald H. Wollett, The Coming Revolution in Public School Management, 67 Mich L. Review, 1017 (1969)

2 Educators Negotiating Service, August 1, 1969, Page 5

3 Ibid Page 4, and ENS Sept. 15, 1969, Page 2

4 Ibid Page 5

5 Maryland v. Wirtz, 88 Sup. Ct. 2017

6 Educators Negotiating Service, May 15, 1969

7 Educators Negotiating Service, Feb. 1, 1969, text

8 Atkins v. City of Charlotte West Dist. N. Carolina, 286-GERR-F-1, March 3, 1969: McLaughlin M. Tilendis, 398 F (2d) 287 7th Circuit 1968; AFSCME v. Woodward, 8th Circuit 1969 281 GERR-F.1.

9 GERR - No. 315, B-9, Sept. 22, 1969

10 Educators Negotiating Service, Sept. 15, 1969, Page 2

11 GERR No. 305 P. 125

12 GERR No. 315 B-15

13 Robert L. Stutz, The Resolution of Impasses in the Public Sector, Proceedings of the ABA. Section on Local Government Law, 1969

14 Edward Krinsky, unpublished doctoral dissertation on fact finding, mediation and strikes, University of Wisconsin, Department of Economics (1969)

2

Detroit's Blueprint for Labor Relations

The labor relations guide which follows has been prepared by Al Leggat and Joseph P. McNamara, Labor Relations Bureau, City of Detroit. Although it is designed to aid management in city employment, it is most applicable to public school classified employment.

The Union contract is an instrument by which the City guarantees, beyond the conditions spelled out by the Charter, Ordinances, and Executive Orders, the over-all conditions of the City employment. In order that this guarantee be a real one and not merely a statement on a piece of paper, it is important that every management representative, at all times, makes sure that the conditions of employment guaranteed by the City are carried out fairly and honestly; that practice coincides with promise.

Written into the Union contract are guarantees to the management against encroachment upon its rights and ability to manage properly.

These guarantees against diminishing management rights are one of the most valuable assets of each individual employee, because they are essential to the employee's present and future job security.

Any proposal to weaken management's right to manage undermines the protection of each employee's job. Only management creates and continues employment and opportunities for pay raises and advancement.

Each Supervisor has, as his responsibility, the task of making sure that the rights of the City are preserved in practice, as well as in the language of the contract. Every action that a Supervisor takes establishes a precedent, either good or bad, right or wrong. It is the hope and expectation of the City that each of its management representatives will take the correct action at all times.

In order that each management representative be properly equipped to take the correct action at all times, this memorandum has been prepared to give each Supervisor the benefit of many years of experience of a large number of Supervisors in dealing with the Union. Many Supervisors will recognize in the situations outlined experiences which they themselves have had. If by utilizing the experience of others we can avoid making mistakes, each of our jobs will be made that much easier and more effective.

The Management Representative

The most important relationship in any organization is that of the employee and his immediate Supervisor. In many cases, the Supervisor is the only member of the City management with whom the average employee has any direct contact. The Supervisor in the eyes of many employees, is the management; therefore, the actions of the Supervisor represent the actions of the management to that employee. The importance of this relationship cannot be overemphasized. No set of conditions should in any way impair or dilute that relationship.

The City really represents all of the employees. As a representative of the employees, the City (among other things):

(a) invests money in facilities, equipment, machinery, tooling, raw materials, supplies,

(b) maintains a large and expensive staff for research, development, engineering, operations, and scores of other specialities,

all of which bring work to employees and create true security for employees.

The City's actions on behalf of all of its employees give each employee his own opportunity for job satisfaction, for insurance and other desirable benefits, for job advancement, for true job security and ultimately for that retirement security which he earns by his day-to-day efforts over the years.

It is the Supervisor who must outline to the employee what his job is and keep the employee currently informed of all conditions surrounding his job. It is the Supervisor who must show the employee how to do his job or to arrange for the employee to be shown how to do it. It is the Supervisor who should keep the employee currently informed on the various questions that come to the employee's mind. A good Supervisor knows at all times the needs of all his employees. He does his best to fill those needs. He acts as their spokesman and advocate with management. He knows what the employees think and why they think that way. He provides constructive leadership to the employees in his area of responsibility in order to guide their thinking along constructive lines.

The Supervisor is a genuine friend of his employees. He should not be intimidated into acting otherwise!

Greatest Cause of Grievances

Lack of understanding between the Supervisor and the employees reporting to him is the greatest single cause of grievances; in most cases these grievances are the unnecessary ones--the ones that never should have arisen in the first place.

A capable Supervisor will keep his employees currently informed at all times, and he will keep alert for the legitimate needs of all his employees. In order to do this, he must get to know his employees and everything about them that has any relation to their jobs.

He must know and analyze fairly their abilities and their capacities. He must know what their experience has been, not only with this Company, but also with other companies. He must recognize that each employee is an individual - and has individual needs and desires. He must also recognize that a group of employees, or more specifically the group of employees who report to him, should constitute a proper working team.

He should attempt to know their problems - analyze them and be of genuine assistance in meeting them - all in a friendly and constructive manner.

At the same time, each Supervisor must know the rules that apply to his entire group of employees, both individually and collectively.

These rules must be applied uniformly and impartially at all times in order for the teamwork to be properly preserved within the department.

The over-all policies of the City must be applied fairly and uniformly. The Union contract itself constitutes a set of rules which the City has agreed to administer fairly, honestly and impartially with respect to all employees in the bargaining unit.

You are the one who is entrusted with keeping the City's promises. Don't fail the employees or the City.

Favoritism toward one employee might result in discrimination against another employee. Resolve to be fair at all times.

Each Supervisor, therefore, should become thoroughly familiar with all of the City policies that are to be applied in his department, and he should have a thorough, active, working knowledge of all the provisions of the Union contract which he is responsible for applying in his area. He should know what the contract says, what the contract actually means, and how the contract can be applied fairly to the employees, and fairly to the City.

All of these things are necessary prerequisites to any actual dealing with the Union. They constitute the foundation on which dealing with the Union must rest. Failures to establish this solid foundation in advance of any dealing with the Union makes the job much more difficult and frequently ineffective.

Steward is Employees' Agent

When the employees elect a Steward to represent them as their agent in the collective bargaining process, that fact in no way should result in a breakdown in the relationship of the employee with his immediate Supervisor. Surveys of workers reveal that they believe that Union and Company representatives should get along well together. They deplore labor strife (which usually hurts them) and desire more and more cooperation.

Efforts may be made by some Stewards to place themselves between the employees and their Supervisor, but the fact that the effort is made should not alter the fundamental principle that the most important employer-employee relationship - and the one most productive of good to the individual worker - is that of the employee and his immediate Supervisor.

Continue to be the true friend and counselor to the members of your crew or work force.

In questions arising out of grievances coming within the scope of the Union contract, the Union Steward can be an effective link between the employee and his Supervisor - rather than a barrier. Whether the Steward becomes a link or a barrier is dependent to a large degree on the intelligence with which the Foreman handles the multitude of situations which do arise.

Being a human being, the Steward might be one of several different types. He might be:

1. intelligent, sincere
2. not so intelligent, but sincere
3. intelligent, but not entirely sincere
4. not so intelligent, and not particularly sincere

With these four basically different types of individuals, we will get four entirely different types of responses. It is important, however, that we proceed on the basis and assumption that the Steward is intelligent and sincere. If by his actions in the later phases of the bargaining, he proves that he is not intelligent or not sincere, then it will be he who has made the mistake.

No management representative should ever commit the error of assuming that a Steward was not sincere in bringing a grievance. It is essential that all management representatives be utterly sincere and honest in all of their dealings with the Union Stewards.

The attitude of the management representative normally is reflected in the attitude of the Union Steward. In other words, if a Supervisor constantly expresses suspicion and distrust of the Union Steward, the Union Steward in turn will express suspicion and distrust of the Supervisor.

This does not mean that a Supervisor must accept as true everything that a Steward has to say. It does mean, however, that the Supervisor must avoid discrediting the Steward by letting the Steward know that he does not believe what he has to say. The Supervisor's attitude should be basically this: "My orders are to see that the Union contract is lived up to fairly and honestly and impartially. You have a grievance - let's look into it carefully and see what should be done about it."

We must remember that the Steward himself is a City employee and that he has been selected by his fellow workers to represent them in their bargaining on grievances. In theory, and we presume in practice, the employees select as a Steward the one among them who they feel will do the most competent job of representing them in handling grievances. It might be that the Steward selected is the most competent one who is willing to serve as a Steward, but we must keep in mind that the selection of the Steward is the selection of the employees - not of the management. Whether or not we agree with the employees in that group that the Steward is the best qualified among them to serve in that capacity is of no importance whatsoever.

It is important, however, that we accept the Steward in good faith as the choice of the employees within the district he represents.

We must always assume that he is usually sincere from his point of view. There may be exceptions. However, it is our desire - and our job - to give Stewards the sincere and careful consideration to which they and the employees they represent are entitled. To assume at the outset that a Steward is not sincere might result in either one of two errors: First, it might result in misjudging the Steward entirely, or it might result in depriving the employees whom the Steward represents of a fair and unprejudiced hearing of their request or grievance.

Keep in mind that the Steward is instructed that a good Steward will always handle the case and try his best to win - even when he is not sure the grievance is sound. By the same token, the Steward also is instructed not to try to win a grievance when he is sure to lose. It is where there is an area of doubt that the steward is committed to the principle that he is obliged to get for the employee that for which the employee asks, if it is humanly possible to do so.

The Union Steward is working for the Union at all times. There are many activities in behalf of the Union that a Union Steward must carry on. He may not be wholeheartedly in accord with the Union objectives, but his position is one in which he is obliged to "follow the leaders." It is only natural that he carries those activities into his bargaining on grievances.

It is not the position of the management representative to do anything with respect to these activities other than to recognize them as legitimate activity and to make sure that such activity engaged in is not in violation of any provision of the contract or other regulations, and further, does not affect adversely the interests of the operations and, therefore, of all the employees.

Summarizing your dealings with the Union Stewards, it is important that these five things be kept in mind at all times:

1. The Steward is a human being.
2. The Steward is an employee of the Company.
3. The Steward is sincere and tries to represent the employee who has brought a grievance.
4. A good Steward will always handle the case and try his best to win, even when he is not sure that the grievance is sound.
5. The Steward at all times is working for the Union.

Grievance Handling

When a Union Steward brings in a grievance, the Supervisor must do the following things:

1. He must listen attentively as the grievance is presented.
2. He must find out, from the Steward, the section of the contract the Steward alleges has been breached.
3. He should question the Steward to develope a full set of facts.
4. He should develop additional facts and verify assertions made by the Steward.
5. He must keep adequate records to show that he has investigated the grievance thoroughly.
6. He must apply sound bargaining principles.

In each of these steps, there are a number of useful techniques which can make a job more effective and easier. In following these points, it is advisable for each Supervisor to proceed in a perfectly natural manner. If the Supervisor's normal manner is incorrect, it is recommended that he practice the following suggested techniques in order that he may carry them out perfectly naturally.

Step 1 - Listen attentively as the grievance is presented

It should be borne in mind that the Supervisor must not only actually listen carefully, but also must indicate to the Steward that he is giving full attention to the presentation of the grievance. Many times, the answer to the grievance will become perfectly apparent if the one presenting the grievance is given full opportunity to present all of the story and all of his arguments for his case.

The way a grievance is received is important because the way a man is treated when he first comes in to make a complaint may have a lot to do with the ease or difficulty of settling the problem.

When you receive the grievance, give the man a good hearing. Give him your entire attention. Remain calm. Even if the man is boiling mad, keep your temper. Let him tell his full story without interruption.

The next step is to calmly ask the man to repeat his story. To get the story accurately and to impress the man with the idea you are taking his complaint seriously, take a few notes while he is speaking.

At this point in the procedure, it is important that the Supervisor avoid (1) making any statements or (2) taking any position on the grievance. It is advisable for him to ask many questions about grievance. It is recommended that, after the Steward has completed his presentation of the grievance, the Supervisor ask questions similar to the following: "Now is that the complete picture as far as this grievance is concerned?" - "What else is there that I should know about this grievance?"

The Supervisor should then restate the grievance in his own words to the Steward, and have the Steward confirm whether or not the restatement of the grievance is basically correct. By doing this, both the City and the Union are sure that the Steward and the Supervisor have the same understanding of what the alleged grievance actually is. This is most important.

Step 2 - Find out from the Steward the section of the contract the Steward alleges has been breached

The second point is to have the Steward identify the section of the contract which he alleges has been violated or breached. While this is being done, one question will be answered by a careful analysis of the Steward's response to the question. If the Steward points to a specific paragraph in the contract which obviously covers the alleged grievance accurately, the proven facts in the case will automatically give the answer to the grievance.

If, on the other hand, the Steward goes into generalities in order to support his grievance and is unable to find a specific contract provision which clearly covers the case, extreme caution should be taken in each of the succeeding steps. If that should be the case, it probably is one of the marginal grievances that might or might not be covered under the contract and, therefore, might or might not require corrective action. If the Steward relies on the provision which gives the Union bargaining rights on a number of things, including "other conditions of employment", it is more than likely that the Steward is groping for some justification for his grievance. Grievances on general conditions, safety, sanitation, and the like might come under this category.

Any condition which might be used as a basis for a grievance on these matters is a condition for which the Supervisor normally is held responsible in the normal execution of his job. If each Supervisor does his job properly in this respect, there will be little, if any, occasion for a grievance to be filed on any of these matters.

In pinning the Steward down to the specific section of the contract which he alleges has been violated, it is well to rely on questions rather than statements. This puts the burden of proof on the Steward. In asking questions, be sure to ask them in a manner that requires more than a "yes" or "no" answer: questions such as "Why do you think so?" or "How do you think that this would apply?" or "In what way would this section be applicable?" or "Was that exactly what was meant when the contract was negotiated?" or "How do you know that this is what is meant?" It is possible that if this questioning technique is carried out properly at this point, the Steward himself will reach the conclusion that he does not have a case. If it is an actual case and if there is a real grievance involved, this technique will give the Supervisor a part of the information he needs to reach a proper conclusion on it.

Step 3 - Question the Steward to develop a full set of facts

The third point of developing a full set of facts is an important one. In a clear-cut case, it is the facts themselves that decide the grievance. In other than a clear-cut case, the facts are no less important because they give to the Supervisor the information he needs to reach a proper conclusion in the matter. The development of the full set of facts also can be most effectively accomplished by using the questioning technique.

Remember, only the facts - all the facts - suggest the correct answer.

Again, we must make sure that the questions, whenever possible, are asked in a manner that requires more than a "yes" or "no" answer. The purpose of developing a full set of facts is to get the full, complete and correct story. This is somewhat different from an attorney's approach in questioning, where the purpose of the questioning is to develop a set of facts which will prove or disprove a specific point.

Also of importance are questions which can be answered by observation - that is, observation on the part of the Supervisor himself or on the part of other people. In asking questions of other people as to their observations on any situation, again be sure to ask questions that cannot be answered by "yes" or "no".

Frequently, the facts presented at the outset by the Steward are a selected set of facts designed to bolster the grievance and to prove the points for a settlement of the grievance in favor of the employee. In order to develop this full set of facts, there are a few questions which might be used constructively at this point. Start first with the basic questions revolving around - Who? What? When? Where? Why? and How?

A dangerous area of exploration is the inclusion of opinions of various people on a specific subject. A technical opinion from a technically qualified person frequently has some value. A technical opinion from a technically unqualified person not only has no value at all, but also can be extremely dangerous. A personal opinion on a non-technical matter is of little value. Keep in mind at all times that you must bargain on facts, rather than on opinions.

Step 4 - Develop additional facts and verify assertions made by the Steward

The facts a Steward brings in, and the facts a Steward will admit knowledge of, usually are a selected set of facts, plus some unsupported assertions, plus a few opinions. The Supervisor must check with his own normal sources of information and records, a complete set of all the supported facts and evidence that are pertinent to the grievance.

Step 5 - Record all pertinent information

Ask questions which will develop information which might be contained in production records, employment records, or any other kind of records normally maintained by the Department. These are of basic importance.

Make notes of this information, including names, dates, times, and all other basic facts.

Step 6 - Apply sound bargaining principles

After the Supervisor has taken each one of these five preliminary steps, the Supervisor then is in a position to start to apply sound bargaining principles. It must be emphasized that the steps previously outlined must be covered before the actual bargaining on the grievance starts. You will note that, at no time during the first steps covered here, does the Supervisor take any position on the grievance, present any arguments with respect to the grievance, or in any other way give any indication as to his eventual decision on the grievance. He has been gathering facts and information which will permit him to use sound bargaining principles most effectively.

This attitude must be expressed in words, in actions and in the very manner of bargaining. Keep these two things in mind at all times:

a. The purpose of bargaining is to reach *agreement* satisfactory to both sides. To be satisfactory to both sides, the agreement must be a fair, honest and impartial application of the appropriate contract of rules provisions.

b. Actions or words or attitudes that *prevent* mutual agreement are not sound bargaining...they are arguing instead. The City has agreed to follow a policy of collective bargaining, *not* collective arguing.

When a Steward presents a grievance, the following *general principles* should guide your actions:

1. *Let the Steward take the burden of proof.* When a Steward comes in with a grievance, he is asking the Supervisor to do either one of two things: (a) to take a specific action, or (b) to change a specific action already taken. *He* is the one who is asking that some sort of action be taken, so *he*, therefore, should carry the burden of proof. Some of the better trained Stewards will attempt to let the Supervisor take the burden of proof. You should get *him* to state what he thinks you did that was wrong; and *then* ask him to prove it.

2. *Continually support and advocate the management position.* Each Supervisor is a part of management. The actions, recommendations and opinions of all the Supervisors combined are the basis for management's policies and practices.

You hurt yourself whenever you disassociate yourself from the management, or the management position. Don't belittle yourself - and never do so in this crucial manner.

3. *When consultation is necessary -- get it.* If you see a situation which you believe may lead to grievances and which you can't do anything about yourself, bring it to the attention of someone who *can* do something about it. Outline all the facts. Then, when you feel that the proper person (usually your Supervisor) has the complete story, check again to be certain that all the details are correct. Report back to your men if a complaint has been made to you about the situation. This will show them that their complaint is not being ignored and something is being done about it. That's good business - your business. That's good management - your management.

4. *Keep the discussion on the point.* If a Steward either carelessly or deliberately attempts to carry on the discussion into unrelated matters, the Steward's attention should be called to the main point at issue, and the discussion should be restricted to the basic facts surrounding that main point. Whether the grievance is one that will require action or one that must be denied, keeping the conversation to the point will bring the grievance to a successful conclusion sooner.

5. *Be serious and sincere.* Most grievances are a serious matter to the individual concerned, so it is important at all times that each Supervisor be utterly serious and perfectly sincere in each step of handling the grievance. If you attempt to block or if you misrepresent anything in connection with the grievance, you are apt to be setting "a trap" *for yourself.* If you try to make a joke out of a grievance, you lose in a great many respects.

6. *Keep the negotiations moving, and keep them moving at a speed which will do both of the following things:*

(a) Assure an early agreement with a minimum of time being consumed and, at the same time,
(b) Permit proper and thorough consideration of all of the factors involved in the grievance.

7. *Check the experience of others, and check the precedent that already has been established in similar cases.* Much time and effort can be saved if each Supervisor gets the benefit of the experience of other Supervisors who have already been through a similar type of grievance. Records should be maintained of all satisfactory grievance settlements, and they should be crossindexed so that the settlement on any specific type of case can be found readily. The smart Supervisor checks these records to gain the benefit of the successful experience of others.

8. *Settle the grievance at the earliest moment that a proper settlement can be reached.* Just as the salesman learns to know the proper time for getting the signature to an order, an intelligent Supervisor learns to recognize the proper time for bringing a grievance to its proper conclusion.

9. *Once you have made your sound decision, STICK TO IT.* Before you ever reached your decision in the case, you made a careful study, investigation and analysis of the case; and you sought the advice and help of others in the management group whenever you were in doubt. As a result, you know your position is sound. You know you are on solid ground. You will command the respect of the employees, the Steward, and the management group only as long as you STICK TO IT.

With your decision on a solid base, you can be confident of the correctness of your decision. You can afford to be firm and at the same time *sell* the reasonableness of your position to the Steward and employee involved.

But it is important that the decision be sold. Merely telling a Steward what the decision is does not give him what he needs to sell the employee on the idea that the grievance must be denied or that the settlement must be different than the employee originally expected or hoped.

If the language of the contract gives a clear answer to the grievance, quote it and repeat it as many times as may be necessary to impress the point.

In addition to quoting the contract, quote the common sense of the situation. Your objective is to sell all those concerned on the fact that your decision is right and reasonable, so emphasize the common sense of your decision.

In a clear cut case the facts themselves decide on the grievance. A clear statement of the pertinent facts is essential in selling your decision.

If other cases have been decided on the same basis as the one you have just decided, quote them. They prove that your decision is not an arbitrary one and that a similar decision has been accepted as satisfactory.

10. Give the Steward a chance to retreat from his original position. In restating the contract provision, the common sense involved, the facts in the case, and the precedent which proves your point, pick out those points which the Steward did not originally present or which were not originally given to the Steward by the employee as important factors in your decision, assuming that the Steward would have reached the same decision if he had had those facts at the beginning.

It is important to the Steward that the employees feel that he has done an aggressive job in presenting their case to the management. Your future relations with the Steward will be improved if you help him in this regard. You might make a statement something like this: "You did a good job, Joe, of trying to sell me on this case, and if I hadn't been careful, you might have had me convinced. But the facts in the case can't be changed, so I made the only decision I could under the circumstances."

11. Remember, there is a reason if your decision is changed in the later steps of the bargaining procedure. Occasionally your decision might be changed as the grievance is appealed through the rest of the steps of the grievance procedure. If it is, be sure that you realize that there was a reason for it. It might be for one of the following reasons:

(a) Additional facts might have been developed that were not available to you.
(b) You might have slipped up in collecting your facts or in weighing them.
(c) The necessity of changing a previously established policy might have become apparent just at the time your case came up for review.
(d) If the evidence is not sufficient to convince an arbitrator, the decision might be changed, even though it was right, to avoid an adverse ruling by the arbitrator.

The final settlement of a grievance is a precedent which can be used as the settling factor in another grievance. Unless a Supervisor checks thoroughly the experience of others as represented in the precedent already established, he is apt to be making additional and unnecessary work for himself; and, at the same time, he is apt in his own settlement to establish a precedent which is different from that already established. The intelligent Union Steward, before he brings in a grievance, will have checked the precedent which has already been established to sustain the position that he is taking.

In any organization, there are precedents on both sides of many of the questions which arise. It is important that all of the precedents be reviewed and that the precedent which supports the proper conclusion in the current grievance be quoted authoritatively.

Management Unity

Whenever a person accepts a Supervisory position, he accepts with it the responsibility for supporting and advocating the management position at all times. That's the job. Management policies and practices are designed to be fair and workable and to promote constructively the future of the City and its employees. Any Supervisor who cannot honestly, sincerely, and actively support the management policies and practices wholeheartedly should elect to take the type of job which does not require automatic support of the management position.

There are times, of course, when you will have an opinion different from that which has been formulated into either City policy or City practice. If that opinion is sincere and sound, it should be passed on to your Supervisor, so that it may be given due and proper consideration in any revision or extension of City policy or practice.

Care should be taken, however, to discuss the matter only among the management group, and not to discuss private opinions, which might temporarily be contrary to those of the City, with any representatives of the Union. The reason for this caution is to prevent the Union Stewards from applying the "divide and conquer" theory to anyone in the management group. Management policy and procedure is a fabric which holds the City together and keeps it aimed toward a constructive goal. Any division among the management prevents, at least to some extent, the full accomplishment of that goal.

Management-Labor Harmony

Here are a few points for each Supervisor to use as he carries on his dealing with the Union:

1. Strive at all times to bring understanding instead of confusion. If in any session with the Union confusion starts to arise, it would be well to make a direct effort to eliminate confusion by asking questions such as: "Let's see exactly what we are talking about." "Is this what we really mean?"

"What is the main point we are trying to decide?"

2. Do things that are consistent. Any action we take today must be consistent with the correct action we have taken in the past. Likewise, any words we say must be consistent with our actions, and our actions must be consistent with our words. This even goes to the point of having the expression on our face consistent with the words we are saying and the actions we are taking. We all have seen examples of where a person says the word "yes", but, by his facial expression and attitude, we know that what he actually meant was "no".

3. Let people know what is expected of them, and do what is expected of you. Every Supervisor is expected to adhere to the provisions of the Union contract; to conduct his department in a proper fashion; and to conduct himself in a manner which will demonstrate that he is a good Supervisor. We should expect the Union Steward to represent the interests of the people in his area effectively and properly. We must expect him to conduct himself in a sincere and honest manner, and we must let him know what we expect of him in this connection.

4. Remember, we usually get in return exactly what we ourselves have given. If we "try to put something over" on a Steward, we can expect him to "try to put something over" on us. If we misrepresent a situation to a Steward, we can expect him to misrepresent a situation to us. If we start indulging in personalities or abuse or name calling, we can expect that the Steward will likewise resort to personalities or abuse or name calling toward us. If we start shouting or getting excited, we can expect the Steward to shout back and also get excited. By the same token, if we make sure that we are honest, sincere, fair and calm in our dealings with the Steward, we can expect that usually he will be honest, sincere, fair and calm in his dealings with us.

5. Live up to your word. For example, if we make a promise to an employee or to a Steward that something will be done, that promise must be faithfully carried out. If we promise a review of classification, for example, we should follow through to make sure that the review of classification takes place. If we promise that an employee will be disciplined the next time he commits an infraction of the rules, we have to make sure that the discipline is invoked. If we should overlook the carrying out of our promises, we will find that whatever we say has no real meaning because we did not live up to our word.

6. Recognize other people as individuals and show them that you do. Stewards are individuals just as are all the rest of our employees. If we are to succeed in dealing with the Stewards (or in dealing with our individual employees), we must recognize them as individuals and let them know that we do so recognize them. The first step in this process is to get to know their names and to call them by name. We must get to know something about their personal interests and their families so we can show recognition of the things that are personal to them.

7. Learn to use questions effectively. We previously have noted that by asking questions which cannot be answered by either "yes" or "no", we can develop a line of thought or to stimulate a person to some specific action.

8. Talk in language that the other person understands. The important thing in any discussion is what the other person understands from that discussion. Our objective is to help him understand. We can help him by making sure that we use language and illustrations that are easy for him to understand.

9. Show enthusiasm toward the other person, particularly in the things in which he is interested or in which he should be interested. If we are to have a Steward work with us instead of against us, we can gain his active cooperation by showing an active enthusiasm toward the things in which he is interested. This does not mean that we have to endorse or support all of the causes in which he might be interested, but if he achieves any recognition, we should show enthusiasm toward the fact that he has gained recognition.

10. Learn to show appreciation. If we actually do appreciate an attitude that a Steward has taken, an action that he has taken, or anything else, we can gain a lot by letting him know that we appreciate it. Nobody likes to be "taken for granted." Many times a casual word of appreciation will do much toward building a proper working relationship between a Supervisor and a Steward.

11. Personalize the things that are good and de-personalize those that are bad. There are situations arising continually throughout the plant where employees and Stewards are involved: some of the situations are good or favorable ones, and some are bad ones. Whenever a good situation arises, it would be well to find an occasion to mention to the participants their identification with the situation. Statements like these could be used; "I see that you did a good job on such and such"; "I see that your department accomplished such and so."

This is an important rule of conduct: personalize the things that are good - depersonalize those that are bad.

This rule will work wonders for you - if you give it a chance!

Where the situation was a bad one, make sure that no statement is made which identifies the individual with the bad situation. For example, in discussing a bad situation, it would be well to point out that "this happened" or "that happened", which was not good, rather than saying "you did this" or "you did that". Try this approach for yourself, and see the response you will get.

12. To influence another person:

(a) recognize his opinion.
(b) recognize the probable sincerity

of his opinion, and

(c) figure out a means satisfactory to him to have him accept another opinion in place of his original one.

Usually, when a Steward comes in with a grievance, he already has formed an opinion that the grievance can be "won" by him. If the facts in the case indicate that the grievance must be denied, the Supervisor's objective is to have the Steward change his original opinion.

If we start out by charging the Steward with stupidity or ignorance or insincerity because he had that opinion originally, the Steward automatically will go whatever lengths are necessary to prove that his original opinion was correct. He will do everything he can to defend his opinion.

On the other hand, if we recognize what his original opinion was and let him know that we can see how he might have reached that opinion originally, he does not have to defend it, and he can retreat from it gracefully, if we give him the means to do so. This can be done somewhat in the following fashion: "I can see that from the information you had when you came in, you might feel that this would apply, but that was before you found out or noticed . . . so and so. With these added facts, of course, the conclusion would have to be . . . such and such." Be sure to stress that the additional information probably was not available to him, rather than asserting that he made a mistake or was stupid for not having thought of it in the first place.

13. Plant constructive ideas, and help those ideas to grow. There are many occasions when a Steward's active cooperation is needed to implement a proposed action or a changed policy. In order to get the Steward's thinking prepared so that he will willingly give the cooperation needed, it is necessary from time to time to plant ideas with him and give those ideas a chance to develop in his mind. In planting these ideas, it is necessary to give to the Steward, a little bit at a time, the constructive points which will be the basis for future action.

14. Learn the power and danger of silence. Silence can be powerful where words would be confusing. Silence can be dangerous if words are necessary.

15. Help others to do constructive things. There are many constructive things that many employees, including the Union Steward, frequently do. If we are to get their wholehearted cooperation, we should help them in every way we can to accomplish those constructive things.

Recommendation: Accentuate the positive!

A Short Grievance Formula

1. Know your tools - the provisions of the labor-management agreement. Be well acquainted with the grievance procedures and City policies. These are your special tools. They will help you do the job only if you become skillful in using them.

2. Know your power to adjust grievances. You are the front line of management to your employees and make your own determinations. A supervisor who openly relies on the judgment of others - or who says he is making a decision because someone else told him to do so - quickly loses the respect of those he supervises. Of course, in many cases you will want to discuss the matter with your immediate supervisor. You are entitled to this advice--often you must have it!

3. Get all of the facts, restate them and then settle grievances informally and quickly. Be prompt in making whatever settlements you are able to make. If you need advice, get it as quickly as possible.

4. Be sincere, sympathetic, fair, and understanding. You will enjoy the respect of all your work force if your impartiality and unprejudiced thinking is obvious. Your conduct should always merit the approval of the workers.

5. Do not "bargain" grievance adjustments. Be a factgetter, a decision maker and not a negotiator. Judge each case on its individual merits.

6. Avoid the use of underhanded methods to "outsmart" grievants. Be above any trickery. You are going to live a lifetime and your long-range reputation means a lot more than any temporary adjustment which smacks of deceit. Don't adopt questionable expedients to appease grievants.

7. Always have a justifiable basis for your decisions. It is your responsibility to ascertain all the facts and to review all relevant records. Usually this can't be done without asking questions. Remember, the aggrieved employee and the Steward want to air their difficulties. You should ask question after question to help do so and to get all the facts. Then, ask questions concerning the records and concerning the way in which to handle this kind of case of your supervisor. Don't hesitate to ask for advice when circumstances require. Ask for advice based upon the facts you have developed.

8. Your decision making must be clear and definite. Be tactful, especially in the event of a grievance denial. It is natural to resent the denial of an alleged right or to be told that one is wrong. Personalize the things that are good - de-personalize those that are bad.

9. Don't be afraid to admit when you are wrong. This attitude encourages employees to admit their own errors. Also, don't blame

others for your own mistakes.

10. You are responsible for carrying out your decisions after they are made and communicated to employees. This follow-up disposes of the immediate grievance and often prevents the eruption of future grievances.

11. Adjust all grievances so that Union representatives have a knowledge of all the facts and a thorough understanding of the reasons for the decision. Prejudice against Union representatives is irresponsible. Union officials can be, and often are, of genuine assistance in adjusting troublesome grievance problems.

12. Keep well informed as to the outcome of grievance cases on appeal. Be acquainted with grievance disposition at all levels. Keep informed: Remember, at all times that the Industrial Relations Bureau and your immediate supervisor are anxious to help you; but, they may not know what tools you need unless you ask for them.

No "Last Chapter"

There is no "last chapter" because neither industrial relations nor your self-improvement will ever reach a terminal point. This thought should be solace to you, for both are as interesting as sports. Your striving to master them offers the type of challenge and ultimate reward in satisfaction that adds zest to life.

There is - and there will always be - "a next chapter". And the next chapter is the one you will write for yourself!

You will write it first - and most importantly - by the manner in which you put into daily use the ideas contained in the foregoing pages. Remember that good habits are the human routes to success. To learn them calls for continuing attention. Don't expect some magic dust to arise from these pages to solve your human engineering problems: you must apply the ideas - not once, not twice - but over and over again. Mastery will be yours if you recall that acquiring and holding fast to habits that mean success is like riding a bicycle. If you stop pedaling, you fall off.

A Checklist to Use

1. Receive the grievance well:

___ Give the man a good hearing.

___ Listen - don't interrupt.

___ When he has finished, ask questions, but take no position.

___ Take notes, KEEP RECORDS.

___ Ask the man to repeat his story.

___ Then repeat the essentials in your own words.

2. Get the facts - all the facts available:

___ Learn the section of the contract allegedly breached.

___ Check the Union contract.

___ Ask questions requiring more than a "yes" or "no" answer.

___ Ask advice if necessary.

___ Check Department policy and practices.

___ Check previous grievance settlements for precedent.

___ Check the experience of others in similar cases.

___ Reach a preliminary decision in the case but temporarily keep it to yourself.

3. Take the necessary action:

___ Avoid confusion.

___ Settle the grievance at the earliest moment that a proper settlement can be reached.

___ Explain your position.

___ Once it is made, stick to your decision.

___ Make the corrections required by your decision if possible.

___ If necessary, pass all the facts to the next step or level.

4. Follow up:

___ Make sure the action was carried out.

___ Be alert to situations which might bring grievances.

___ Correct such situations before a grievance is filed.

___ Know your employees and their interests.

___ Maintain an atmosphere promoting the highest morale.

___ Constantly support management - your management (the management of which you are an important part.)

3

Unionism and Public Employees

The following special report by David B. Wilson of the Boston Globe appeared in recent issues of the Globe as a seven-part series, and is being reprinted by permission. The beginning of each of Mr. Wilson's seven installments is indicated by a Roman numeral.

I

If government is everybody's business, then the labor movement in government is everybody's revolution.

Every teacher with a new idea, every taxpayer with a drawerful of bills, every selectman who misses his family, every office holder with an election in prospect—in a word, everyone—is involved. And the revolution is only beginning.

Should public employees strike? Why not? Who should decide what is taught? Who should run police stations? Mental hospitals? Welfare agencies? How much is a good policeman worth to society? Who's really in charge? Who ought to be?

The answers are not easy when government is less and less an exercise of authority and more and more a service industry whose employees do the same kinds of things done in the private sector.

Public employee organization is the labor movement's success story of the 60's, and it is growing. In Massachusetts, by conservative estimate, some 325,000 persons—more than one-fifth of the working force—earn their livings in public employment. More than 250,000 draw their pay from state or local government.

Not all of these are members of unions or professional associations which bargain collectively with government employers. But most are either members or work in jobs covered by union contracts. Their numbers, militancy and political effectiveness are increasing steadily.

For government, and society as a whole, this is a totally new phenomenon, not unrelated to the civil rights movement, student and faculty demands for power in education at all levals and the burgeoning movement for citizen participation in politics.

Symptomatic of government's unreadiness, unwillingness or, perhaps, incapacity to deal with its labor relations is this reporter's failure in a diligent search of concerned public and private agencies and labor organizations to come up with an informed estimate of total union membership in public service.

The revolution is too new and is moving too fast to develop precise, over-all statistics for Massachusetts. Hundreds of public employers and thousands of bargaining units are involved, and nobody is counting all the heads.

Nationally, according to the most recent estimate by the Advisory Commission on Intergovernmental Relations, more than a quarter of the approximately 9 million state and local employees are union members. Massachusetts' relatively liberal statutes in the field and the fact that only 31 states permit public employees to organize, indicates the proportion here to be considerably more than twice the national average.

It may even be greater. Robert J. M. O'Hare, director of the Boston College Bureau of Public Affairs, writing in the Massachusetts Municipal Collective Bargaining Manual in October 1968, predicted that all city and town employees soon would be covered by collective bargaining contracts.

"There seems to be nothing on the horizon that will stop or slow down this movement until every eligible employee is covered," O'Hare said, noting that, in union certification elections, votes of less than 90 percent for the union are rare. He said he knew of no instance in which a Massachusetts municipal employer had opposed recognition as such.

"The era of unquestioned authority of the Massachusetts public employer to decide the hours, wages and working conditions of its employees unilaterally is over," he concluded.

The implications, viewed in the light of employee militancy and skyrocketing public payrolls, are enough to make the average taxpayer reflect on the advantages of the hippie commune.

In the last 10 years, according to the Massachusetts Taxpayers Foundation, local real estate taxes have increased statewide from $662 million to $1,397,000,000—more than 100 percent. At the state level, in less than four years, some $400 million in new taxation has been laid on the Commonwealth.

$4,000,000 Per Month

MTF Executive Secretary Frank J. Zeo cites figures to show the state payroll alone, running at a half-billion-dollar annual clip, is increasing by an average of $4 million a month.

The U.S Bureau of the Census' latest report shows a national increase in state and local employment of 424,000 between 1967 and 1968, with an annual rate of increase averaging 4.5 percent since World War II.

In the 17 years preceding October 1968, the date of the most recent federal figures, state and local employment in numbers of workers increased 107 percent and their payrolls rose by 371 percent.

In Massachusetts, State employment has risen from 40,352 in 1959 to a current conservative estimate of 60,000 - almost exactly 50 percent. The payroll in dollars at the state level has tripled in the same period.

The Census Bureau counted 138,621 city, town and county employees in 1959, and 185,603 in October 1968. A realistic projection for today would push the figure past 200,000. Their compensation in the 10 years has gone up by a factor of 133 percent.

It would be a mistake to infer from the documentation of growth in the public sector of the economy that state and local employees in Massachusetts are overpaid. They are not.

It is true that average monthly compensation has increased from $375 in 1959 to $623 in 1968, with 1969's state employee pay raise and municipal bargaining settlements assuring a substantial increase this year.

But the 1968 figure for this state is far from generous when compared with other major industrial states, well below, for example, California's $771, New York's $703, Michigan's $702, New Jersey's $660, Illinois' $664 and Mississippi's $414.

What appears to have happened since the Legislature granted collective bargaining rights to municipal employees in 1965 and 1966 and to state employees in 1967 is that these employees have used their newfound militance, muscle and organization to bring their pay up to national standard.

It is important to remember that the collective bargaining law for city, town and country employees permits negotiation of wages and hours, in contrast to the state employees' law, which leaves the setting of pay scales to the Legislature.

The Thrust For Power

But the unions and professional associations representing public employees are under pressure from increasingly active and politically sophisticated memberships to increase their influence, affluence, scope of negotiations and ability to get things done for the members—in a single word, their power.

Involved is the ideal of increased participation in public decision making by teachers, policemen, nurses, social workers and others long frustrated by the dusty-musty processes of conventional bureaucracy.

This impulse coincides neatly with the employees' fight for better economic conditions, and eventually collides with the budget.

Traditional democratic theory jealously vests in the Congress at the national level and the Legislature at the state level the right to authorize the expenditure of public money and to make policy for the expenditure.

At the local level, generally speaking, this power is exercised by the mayor and city council, the school committee and the town meeting, representative or otherwise.

It is difficult to argue that true collective bargaining covering wages, hours and that ultimate and subtle concept "conditions of employment" (Must a police officer wear a name tag? To how many coffee breaks is a teacher entitled? More than a social worker? Who shall choose what textbooks and how many teaching machines at what cost?) is compatible with the traditional concept of public control of public purse and policy through elected representatives.

To the union activists, this is outmoded hogwash, mere rhetoric designed to keep pay scales down and to preserve a discredited status quo.

The more conservative believe they see a threat to the ultimate American Revolutionary principle of "no taxation without representation," with the public employee unions cast as bad King George.

In fact, the principle is only technically honored in municipal bargaining as town meetings and city councils grudgingly, reluctantly and helplessly vote the funds to honor the contracts negotiated by their employees in an inflationary economy.

What proportion of the escalating cost of local government is attributable to collective bargaining?

The question can be, and is, argued indefinitely by the parties in interest. Most legislators with whom you discuss it rank collective bargaining and welfare as the two most significant contributors to the rising cost of government.

At the same time, there is widespread recognition of the fact that, at least until recently, public employees have lagged behind their counterparts in private industry in compensation.

What is virtually unchallenged from any quarter is that unions are in government to stay. The municipal law is a four-year-old infant; his little brother at the state level is only two. What they will be like at maturity nobody knows. But most will agree with BC's O'Hare that collective bargaining is "an instrument effecting social changes in areas far removed from the domain of employee relations."

II

A 1955 Federal law makes it a felony for a U.S. government employee to strike or even assert that right.

Massachusetts law regards a strike against the state or any of its political subdivisions as a misdemeanor punishable by a $100 fine. Forty-nine states specifically ban strikes in public service. In California, which does not, they probably are illegal.

A poll taken for the Pennsylvania Legislature last summer found public opinion in that state overwhelmingly opposed to extending the right to strike to public employees. Forty-four percent responded that no public employee should be permitted to strike, 61 percent opposed it for teachers and about three out of four opposed it for police, firemen and mental hospital employees.

Most people, it is reasonable to suspect, tend to believe with Calvin Coolidge that: "There is no right to strike against the public safety by anybody, anywhere, anytime."

Statute, tradition and public opinion to the contrary, public employees do strike, and with increasing frequency. Shortly before New York city's garbage collectors and (later) teachers conjured crisis in the streets, Governor Nelson Rockefeller was quoted as saying: "A strike or threat of a strike by public employees is wrong in principle and utterly inconsistent with their special responsibilities as public servants."

Militants in the public sector union movement regard this statement as about as relevant as Franklin D. Roosevelt's 1937 assertion that "the process of collective bargaining, as usually understood, cannot be transplanted into the public service" and that "militant tactics have no place in the functions of any organization of government employees."

To the activists, this is ancient history.

Howard V. Doyle, president of Massachusetts Public Employees' Council No. 41, American Federation of State, County and Municipal Employees, AFL-CIO, is no bomb-thrower. But this year he will file legislation extending the right to strike to all public employees with the exception of police, firemen and correction officers.

As to criticism: "It does not bother me. If people try to hide behind the statute, people are going to do it (strike) anyway.

"If the situation is such that the employees believe they're right and the other guy's wrong, I honestly believe they'll strike and suffer any consequences necessary.

"Sure, this is civil disobedience. I don't believe people should be forced to violate the law in order to settle disputes."

Doyle's right-to-strike bill was summarily killed in the House last year, and he has no high hopes for its passage in the coming session. But he believes the day is coming.

The state, he says, came within a hair's breadth of a major work stoppage on the day the Senate finally overrode Governor Sargent's veto to enact the $20 or 12 percent pay raise last summer.

Had the veto stuck, "we would have had a walkout, there's no doubt in my mind that we would have had a strike," he says.

The 42,000 member Massachusetts Teachers Association (MTA), which still prefers not to be called a union, also filed a strike ban repealer in the last session and will again for 1970.

The MTA legislation would authorize a public employee strike after exhaustion of all administrative remedies, specifically, if no action had been taken by either party 14 days after submission of a fact-finder's report in a labor dispute. No category of employee would be exempted.

In addition, the MTA, with new fire in its eye since the nine-day New Bedford teachers' strike, is going to court to have the Massachusetts public employee strike ban ruled unconstitutional under the First and Fourteenth Amendments.

The argument advanced by MTA General Counsel Haskell C. Freedman, with support from Robert N. Chanin, general counsel of the National Education Association, is that the right to strike is enjoyed by employees in the private sector, protected by the First Amendment guarantee of freedom of assembly and petition and cannot, under the Fourteenth Amendment be denied public employees.

The suit, if successful, would invalidate all public employee strike bans, including those applying to police and firemen.

Massachusetts has been relatively free of work stoppages in the public sector. The nation has not.

Globe writer Robert E. Walsh's definitive book on the subject, "Sorry . . . No Government Today," reports that between 1958 and 1967, when most public employees did not even enjoy collective bargaining rights, there were 567 work stoppages. In the first 10 months of 1968, Walsh reports, police and firemen across the nation were involved in at least 25 work stoppages or slowdowns.

The year-long study by the distinguished Advisory Commission on Intergovernmental Relations, released two months ago, counted 254 work stoppages in 1968 alone and reported that "between 1966 and 1968 the number of strikes involving government employees nearly doubled, with teachers accounting for more work stoppages than any other group."

All of these were illegal, a fact that apparently carried little weight with the participants.

Advocates of repealing the ban say collective bargaining without the right to strike is a sham that leaves all the trump cards in the public employer's hand. They suggest that the right to strike would in practice result in fewer strikes inasmuch as employers would be forced to bargain realistically on the issues and come to agreement.

Few on the management side, if any, agree publicly. But a poll taken at a recent New York conference of labor relations experts in the field favored some dilution of the outright ban.

The outcome is unpredictable. The outlook, most observers agree, is for more, bigger and longer public employee strikes with serious implications for future domestic tranquility.

III

If public employee unionism is a revolution, collective bargaining by teachers is a fervent crusade to wrest the educational Jerusalem from the infidel grasp of civic penny-pinchers.

No organized group of public employees is more militant than teachers. None has greater influence on our lives.

With school costs amounting to 50-60 percent of local spending and salaries taking 80 percent of school costs, teacher contract settlements tend increasingly to be the most significant factor in local finance.

The teachers don't mind a bit. Convinced that education in general and themselves in particular have been handed the dirty end of the economic stick for years, they are using their new organizational strength to elevate educational standards—which, of course, include teachers' pay and working conditions.

But dollars and their distribution are only a part of what it's all about for the 1.6 million pupils, students, teachers, administrators, supporting staff and others involved directly in education at all levels in this state.

Organized educators assert and are pressing the right to bargain on curriculum, textbooks, equipment, buildings, "paraprofessional personnel" like teacher aides and student assistants, and that vaguely defined and potentially illimitable area called "academic freedom."

What, then, is left as the proper role for the school committee?

Dr. William H. Hebert, executive secretary-treasurer of the 43,000-member Massachusetts Teachers Association (MTA), has this reply:

"The proper role of the school committee is to make policy decisions locally not covered by standards set by the Legislature or the Department of Education. I am unalterably opposed to school committees becoming involved in administration.

"The committees' important functions are the employment of administrators and teachers, recruiting, seeing that statutory requirements are met and approving football schedules."

His reference to football was only half facetious. Hebert sincerely believes the salvation of the public schools is to be found in the extension of teacher participation and power. In 1970, for the fourth consecutive year, he will ask the Legislature to furnish them with the strike weapon to get it.

Seven years ago the association formally opposed collective bargaining as unprofessional. Before February 15, 1966, when collective bargaining became legal for teachers and the MTA had only 30,000 members, there were, of course, no contracts in effect.

Sixty were negotiated in 1966, 160 the following year and today, in virtually every one of the state's 351 cities and towns, academic personnel are represented or are about to be represented either by MTA or by locals of the AFL-CIO Massachusetts Federation of Teachers (MFT).

The MFT has bargaining rights in Boston, Lawrence, Lynn, Peabody and Salem, and active units in Everett, Methuen, Somerville, Springfield and Pittsfield. There are others.

To complete the picture, the two big educators' organizations are deeply involved in merger talks at the state and national levels. Everyone in the field anticipates that soon, probably next year, there will be one, nationwide association (Hebert and most teachers still are a bit uneasy about the word "union") in education at every level from pre-primary to post-doctoral.

This swelling accretion of power transcends the educational institutions in which its members are employed. Teachers vote. And they pay dues. The MTA collects $34 apiece from its members for an annual dues income of around $1.5 million.

Senate President Maurice A. Donahue, more aware than most of this emerging power structure, on November 5 took his campaign for the Democratic nomination for governor to the annual convention of the Bristol County Teachers Association at Somerset High School.

Speaking as "a former public school teacher who long ago retired to the more serene life of the elected public official," Donahue delivered a Harry Truman-style, give-'em hell fight talk in praise of what he called "the increased militancy of the teaching profession. ..."

"In the old days, teachers were weak, compliant and submissive," he said.

"Casper Milquetoast seemed to be the idol of the profession — unobtrusive, unassertive, unwilling ever to make a stand for his legitimate rights.

"Teachers were isolated. Teachers were unorganized. Teachers were never accorded the respect they justly deserved because they were unwilling or unable to demand the respect properly due their high professional calling.

"But all that is gone now — and I, for one, am glad that we shall never see those sorry days again.

"Today teachers at long last are beginning to come into their own. You are no longer alone. You have begun to organize efficiently and effectively.

"You have begun to assert your economic and political power in the new process of collective bargaining — a new process which gives every indication of transforming the very nature of public education in Massachusetts — and, in my judgment, decidedly for the better."

Donahue said the state's present collective bargaining law puts teachers at a disadvantage in negotiations with their municipal employers.

He praised MTA's drive for a professional rights fund, which he termed "a self-help measure which in the future will be available to teachers caught in exceptionally adverse economic conditions as the result of the insistence upon their rights in difficult collective bargaining situations."

The teachers, still savoring their victory in the nine-day New Bedford teachers' strike and recalling the $50,000 contempt fine imposed on their association, had no difficulty grasping Donahue's point.

(MTA is appealing the fine in an action which, if successful, would nullify laws banning public employee strikes in the 49 states that have them.)

Fine or no fine, the New Bedford strike worked from the teachers' point of view, conquering in less than two weeks what had been 22 months of intransigent resistence by the board.

The other day, Boston's 5,400 teachers were reported preparing to demand $10,300 as a starting salary in an agreement that would give teachers with doctorates $26,800 after eight years. The package is estimated at $60 million, or $36 on the tax rate.

Boston teachers are presently among the best paid in the state. Their current salaries range from $7,000 for bachelor's degree beginners to $13,100 for veterans with doctorates. But this scale lags substantially behind MTA's minimum salary policy, which calls for a $7,500-$15,000 range. The National Education Association, MTA's national affiliate, was calling for $10,500-$21,000 a year ago.

The teachers' new militancy, advocacy of the right to strike by their leadership and the coincidence of an election year, in which Boston Mayor Kevin H. White will be battling Donahue for the right to try to oust Governor Sargent from office — these are observations adding up to a stormy forecast for 1970.

At the same time, property tax rates are rising at a 14 percent annual clip statewide, with Boston's rate at $144.40. City and town debt structures are shaking, money is tight, state government is strapped to pay its 60,000 employees their new raise, and Federal dollar aid to cities is dwindling and generally earmarked for purposes other than teachers' pay.

Through September of 1969, Massachusetts had counted only five, brief work stoppages in the field of education. Many observers believe New Bedford's experience signaled the beginning of a new and disturbing trend in what has become the most unruly and problem-ridden sector of an uptight society.

IV

Massachusetts law attempts to limit the collective bargaining rights of public employees.

The employees' leaders say this is discrimination, unconstitutional, undemocratic and unfair.

Critics bold enough to risk the wrath of 325,000 politically attuned, potential bloc voters disagree. They say public employees exercise more than enough power to offset any disabilities they may suffer at the bargaining table.

The collective bargaining issues are illuminated in the legislative program of the Massachusetts Public Employees Council No. 41, American Federation of State, County and Municipal Employees, AFL-CIO, Howard V. Doyle, president.

Doyle leads the biggest union in state service, a statewide organization whose membership has grown from 9,000 to 20,000 since 1961. AFSCME units have bargaining rights for 22,000 state employees — more than a third of the total. When he speaks, legislators, governors and even bankers listen.

AFSCME in 1970 will ask the legislature to:

- Repeal the ban on public employee strikes, save for those affecting police, firemen and correction officers.

- Require that provisions of collective bargaining agreements shall prevail in any conflict with municipal charters, Civil Service rules, local ordinances, rules and regulations and general statutes. The opposite is now the case.

- Grant public employee unions the right to negotiate agency shop contracts under which employees refusing to join unions would be required to pay, usually by checkoff, the equivalent of union dues.

Defenders of the strike-ban repealer include Attorney Alexander J. Cella, assistant to Senate President Maurice A. Donahue. Two years ago, Cella, in an article in "The Municipal Voice", published by the Massachusetts League of Cities and Towns, warned that "Massachusetts citizens would be dangerously deluding themselves if they were to believe that the problems of public employee strikes have been irrevocably eliminated by statutorily defining them away."

Cella calls "the right of municipal employees to strike . . . a fundamental prerequisite to peaceful and responsible collective bargaining" and believes that it would result in fewer work stoppages in public service.

ASFCME's second goal would vastly increase the scope of negotiations, that is, what the union could ask for and bargain on. More and more civil service, once regarded as the employees' shield, is regarded, in the words of one AFSCME leader, as "nothing more nor less than the personnel arm of the public employer..."

The union also would like to be able to bargain with the state on wages, hours, mileage, overtime, differentials, pensions and fringes now being set by statute by the Legislature.

Advantages of the agency shop to the unions can be deduced from the statistic that AFSCME has 12,000 dues-paying members in units representing 22,000 employees in the state. The bill would virtually double the unions' dues income and eliminate "free riders."

The goals seem not unreasonable if the standard of judgment is comparison with union rights in the private sector. The unions' critics insist that such a comparison is deceptive.

In the first place it reckons without the membership's political power at the ballot box. A standard rule of thumb has for years been that one job equals five votes.

Perhaps no monolithic bloc of 1.5 million voters exists. But it is not unreasonable to suggest that public employees already exercise an effective veto on political ambition in this state if they choose to exercise it. Except, perhaps, in such places as Duxbury and Boxford.

Second, labor conducts an effective continuing lobby in the Legislature and within state service. Its influence can be applied or withheld at such pressure points as civil service, the bureau of personnel, the committees on ways and means, the governor's office and elsewhere in the structure.

Third, the statute banning strikes is a fiction, and everybody knows it — although labor has, under extreme provocation at times, generally observed it. Massachusetts came to the brink of statewide work stoppages last year in the legislative fight over the state pay raise.

The penalty for violation of the ban is a $100 fine. Nobody can remember when it was imposed, and it probably never has been and never will be.

A "Credible Deterrent"

As a result, in bargaining situations, both sides know that a strike is a possibility, given increasing militancy on the part of employees. It is, as the Pentagon jargon goes, a "credible deterrent."

City and town officials are finding it increasingly difficult to hide behind the language of charter, statute, rule or ordinance in their dealings with their employees. Increasingly in negotiations, the practice is to ignore the rules and the law, reaching agreements that are probably unenforceable at law.

It is expensive and annoying to go to court, and far easier for government employers to agree tacitly with unions not to avail themselves of their right to sue.

There also is the delicate question of money. Public employee unions have lots of it and they are free to spend it as they see fit.

Public employee unions are exempted from the audit, reporting and disclosure requirements of the U. S. Labor Management Reporting and Disclosure Act of 1959. The reason is an odd one. At the time, the drafters of the act did not even suspect that unions would win collective bargaining rights in government service. The very idea was repugnant to congressmen who regarded it as an unacceptable invasion of the ancient concept of sovereignty.

Only three years later, however, on the urging of then-Labor Secretary Arthur J. Goldberg, President John F. Kennedy issued Executive Order 10988, authorizing collective bargaining in the Federal service. No other document has had such far-reaching influence on public employee unionism.

All public employee unions remained exempt from the audit, reporting and disclosure recruitments, which make other unions' financial records public records. In 1969, however, President Nixon issued an executive order requiring, among other things, disclosure at the federal level.

Unions of state, county, city and town employees, whose dues income in Massachusetts alone must be reckoned in the millions annually and could skyrocket if the agency shop bill should pass, are still not required to account to anyone, not even their own members, for what they do with their funds.

For 3,450 state employees, to cite a small example, the state treasurer's office deducts from their pay checks and turns over to their unions a total of $14,000 per month. An agency shop would boost this figure by a factor of seven, to $100,000 a month.

Because of Massachusetts' traditional fiscal autonomy for school committees, their negotiators, who in effect deal directly with the taxpayers' money contracts, are subject neither to review nor to revocation by the appropriating authority, be it city council or town meeting. In practice, other municipal negotiations prove similarly binding.

Finally, public employee unions and their officers make campaign contributions. There is nothing illegal or even improper about this. If nursing homes, tool-and-die makers, textile workers and bridge-builders can attempt to use money to influence legislation, then why shouldn't public employees, whose bread and butter is more directly involved?

Even a cursory examination of campaign expense returns yields abundant evidence of this kind of generosity. For example, Howard V. Doyle, for AFSCME, contributed $1,000 to the Committee to Retain a Democratic Senate on November 15, 1968. The committee also reported receiving $200 from the Massachusetts Police Association, $300 from various firemen organizations and $300 more from William H. Hebert, not otherwise identified but presumably the executive secretary-treasurer of the Massachusetts Teachers' Association. A Mike Bothelo of AFSCME added $200, according to the records on file with the Supervisor of Public Records.

The Committee to Retain a Democratic House also got $200 from the police group, $300 from Hebert, $100 from the Department of Public Works Engineers Union and $1,000 from one

Louis Poirier for AFSCME.

Hebert, with a flair for bipartisanship, deposited $200 with the "Fighters for a Republican Senate," a gesture which seems quixotic in retrospect, inasmuch as the "Fighters" elected only 13 senators to the Democrats' 27.

The records also show Senate President Maurice A. Donahue receiving in 1968, $500 from Salvatore J. Camelio, state AFL-CIO president. Camelio's son, Augustus J. Camelio, is AFSCME counsel and represents the union before the State Labor Relations Commission. Donahue also got $300 from the Building Service Employees Union and $300 from Jerry Wurf of Washington, D.C., then international AFSCME president and one of the nation's leading advocates of public employees' right to strike.

Again, it should be emphasized that those contributions are perfectly legal.

But unhindered by the audit, reporting and disclosure requirements imposed on other labor organizations, public employee unions are in a position to make covert cash contributions to candidates without leaving a trace on the public record, or to act as a channel for such contributions from other sources. Perhaps they do not. It would be nice to think so.

V

Public sector collective bargaining hit Massachusetts in 1966 the way the 1938 hurricane hit Cape Cod. Nothing quite like it had ever happened before and the inhabitants were woefully unprepared. Almost four years later, the situation is not much better.

When the tidal wave started swirling around the front porch of the Sargent administration last summer, the governor did the appropriate thing: he appointed a committee of distinguished experts.

At this writing, the committee, formally the Governor's Advisory Council on Labor-Management Relations, has held two meetings, requested an agenda and asked for an executive director and staff. There isn't a light-weight in the group, and they are all busy men.

Blame, if any, for the state's defenselessness in the rough-and-tumble of collective bargaining must be laid at the doorstep of the Volpe administration, which did little if anything to prepare for the onslaught.

Most of those familiar with the situation believe that the then-governor, now Secretary of Transportation, was reluctant to risk political retribution by any action that might be interpreted as anti-labor.

Meanwhile, the 16,000 members of the Massachusetts State Employees Association, the 12,000 state employee members of the AFL-CIO American Federation of State, County and Municipal Employees and the thousands of other dues-payers of other unions in state service, newly militant, were after their leaders to get some things done for them.

Their numbers are growing daily, along with the unresolved problems in the situation. They want better pay and more influence in decision-making. The state, newly cast in the role of employer, has not, it seems, quite made up its mind what it does want.

In terms of professional labor relations expertise — with which the unions are well supplied — the state is virtually bankrupt.

Ratio: Two Per 60,000

No criticism is intended of Edward E. Kuypers, newly installed supervisor of labor relations, who, with a single assistant and, until recently, no secretarial or telephone-answering staff, operated out of a small room on the State House's fifth floor. The point is that Kuypers, who used to handle labor matters for First National Stores, and the assistant, Joseph Harraghey, are all the 60,000-employee state government enterprise has to call on in terms of professional help in a technical field.

Kuypers estimates that 30,000 employees are now in certified bargaining units involving 24 different employee organizations. He says 15,756 employees are currently covered by 52 contracts and almost as many, 14,244 by his count, are in 114 units still conducting negotiations with agency heads.

The agency heads, men like Dr. Milton Greenblatt, a psychiatrist who is commissioner of mental health, and Dr. Alfred L. Frechette, an obstetrician and gynecologist who is commissioner of public health, would be the first to admit, perhaps even plead, that they are not labor relations specialists.

Yet the law requires them to bargain with any labor organization that wins certification from the State Labor Relations Commission. And most of what they have to bargain with (since pay, hours and fringes are set by the Legislature) is their own authority.

Administration Commissioner Donald R. Dwight calls labor-management relations "the great hidden crisis of state government." Last April, he ordered all agency heads to submit contracts to Kuypers for approval before they are signed.

In fact, however, Dwight has only implied authority to require such approval. At the time Kuypers was merely a consultant to the state. Under the law the department head is the contracting authority and in the politically supercharged atmosphere of Beacon Hill, some department heads prefer to deal with unions independently of Dwight's office.

The other side of this coin is that the vast majority of department heads are novices at dealing with unions and welcome and eagerly solicit Kuypers' help. The problem is that there is just so much that one man and an assistant can do.

The unions, for their part, suspect that the state's apparent naivete in the field amounts to deliberate stalling.

Kuypers and the unions, or most of them, would like to see a separate collective bargaining division set up in the office of Administration and Finance, with expert labor relations people directly assigned to the major departments. This proposal is currently under discussion with the Joint Ways and Means Committee of the Legislature, which is believed to be receptive.

Kuypers envisions a director of collective bargaining, a deputy, full-time attorney specializing in labor relations, perhaps a half-dozen experienced professional negotiators, men who in the private sector would have jobs as corporate personnel directors, with supporting secretarial and clerical help.

This does not seem unreasonable, even to the most cynical convert to Parkinsonism, when you consider the size of the state government enterprise and its growing half-billion-dollar annual payroll. It would be totally inadequate if, in some future year, state employees should win the right to bargain on wages, hours and fringes, as is far from unlikely under the program budgeting that will come in under the new cabinet-style reorganization act, due to become effective in 1971.

At the municipal level, the situation more directly touches the tax rate and ways cities and towns do business. It is complicated by the voting power of city employees in municipal elections and at, often, sparsely attended town meetings.

Education Commissioner Neil V. Sullivan, a strong believer in teacher collective bargaining, took a headcount last summer and discovered that more than 350 school committee members had resigned since the first of the year, most of them because of the new pressures brought about by collective bargaining.

The average school committee member knows nothing about labor relations or collective bargaining law. Indeed, a school committee member is not supposed to be either an expert in such matters or a professional educator.

Sullivan says he is disturbed that in many cases, those new members moving into vacancies are less qualified and dedicated to students' welfare than those who have resigned.

Meanwhile, organized teachers, nationally and locally the most militant of public employees with the possible exception of police officers, appear at the bargaining table clothed in political power and advised and counseled by professional experts. Municipal corporations — particularly small towns — have no such resources available to them and probably can't afford them.

In Boston, attorney Allan W. Drachman has been chief negotiator for the city under Mayors Collins and White. The city deals with 22 unions representing its 15,000 employees. All of them vote and most of them live in Boston.

Patrolmen Want $12,000

The city and the Boston Police Patrolmen's Association, representing some 2,600 policemen, were still trying to settle their differences in December, following a fact-finder's recommendation of a $10,300 salary. The patrolmen want $12,000, and they have been waiting since March 1969. The currently get $8,320 base pay and are very unhappy about it. Their contract expires in March 1970.

Daniel P. Sweeney, chairman of the association, prefers not to talk about the possibility of a strike. The association's constitution, in fact, forbids such action.

"I hope we're never driven to such extremes," he said the other day. "But I'm dealing for 2,600 men who have minds of their own. The city can be very abusive, too."

Meanwhile, Boston's contracts with electrical inspectors, nurses, printers and, in dollar terms most significantly, teachers are running out next year.

The possibility that next fall Boston's militant teachers might follow New Bedford's successful example and stay away from classes while police officers suffer a mass epidemic of the "blue flu" gives the city fathers recurrent headaches, although the threat is a year away and may never come to pass.

But the unions know that Mayor White will be running for governor and that the Democratic primary will be held in September. Under the circumstances, it is perhaps fortunate that Boston firefighters have a contract that does not expire until March 1971.

VI

Administration Commissioner Donald R. Dwight, who runs the state goverment for Governor Sargent, or tries to, was unusually outspoken last October 15 when he addressed the first meeting of the Governor's Labor-Management Advisory Council.

Speaking of the collective bargaining problems arising with increasing frequency and urgency at the state and local levels, he told the assembled experts that the problems "are just now beginning to emerge.

"While I may curse the day the law was enacted," he said, "it is absurd to run away from its implications.

"Just as certain as we sit here today, the ultimate breakdown in employee relations, a strike, is going to be faced by the governor ...

"If we had sound labor structures within the executive branch, the need for this council would be obviated. But we don't.

"The Department of Labor and Industries and its subordinate divisions and boards, are dismal.

"They have been the dumping ground for labor hacks, and the quality of their efforts reflects this condition. Republican governors have been the worst offenders in making appointments ..."

Dwight asked the council to review the structure of the existing agencies in the department. Presumably it will.

Now Dwight is a newspaper publisher, a former Department of Public Works commissioner and a Republican politician as well as "deputy governor." He is not a man who treads on toes by accident.

The fact is that his opinion of the department, and, one infers, its subsidiary Labor Relations Commission and Board of Conciliation and Arbitration, is widely shared.

Chairman of the board of Conciliation and Arbitration is George M. Romanos Jr., a Boston real estate operator and Republican politician with many enemies in his own party whose appointment is regarded as a reward from former Governor Volpe for services rendered in the 1966 campaign.

The board's professional staff tries to head off strikes by mediating labor disputes. Many of these career employees are highly regarded.

The board also appoints $125-a-day fact-finders in public sector collective bargaining situations, and has done so 78 times since the municipal collective bargaining statute took effect February 15, 1966.

The Labor Relations Commission has a different role. The three-member commission conducts elections and certifies bargaining agents in the private and public sector, rules on appropriate bargaining units and hears charges of unfair labor practices.

Chairman of the commission is Mrs. Madeline H. Miceli, a hard-working and conscientious woman whose appointment also is generally considered to be the payment of an old political debt by Volpe, in whose campaigns she worked enthusiastically.

Most recent Volpe appointee is Henry C. Alarie, a longtime member of the Worcester Licensing board and furniture dealer in that city. His previous experience in the field of labor law and collective bargaining, like Mrs. Miceli's, is negligible.

The third member of the board, Stephen E. McCloskey, is a longtime labor figure appointed by former Governor Furcolo. McCloskey's original appointment was regarded as a reward for his support of the sales tax.

The commissions members do not get on very well with each other and with the commission's career staff.

Labor organizations and municipal employers alike complain of long delays in decision-making, inconsistencies in decisions and a lack of professional sophistication on the commission.

"A joke" was the description given by one prominent statewide figure in the labor movement when asked his opinion of the board. A top negotiator for a major city guardedly expressed the opinion that the commission "is not regarded as very professional at City Hall."

The reluctance of these critics and others to be quoted by name is perfectly understandable inasmuch as they and the organizations to which they owe loyalty are likely to appear before the commission at any time.

A month ago, the commission had no figures covering the number of certification elections it had held in state service in the year ended last June 30. It was working on them, an official said.

Salaries in the agency are depressingly low, with corresponding morale. Procedures are cumbersome and time-consuming, leading municipal employers and unions alike to suspect, rightly or wrongly, that delays are politically motivated.

Nevertheless, in the fiscal year ended June 30, the commission handled 149 cases and conducted 108 collective bargaining elections covering 11,624 municipal employees, according to Alfonso D'Apuzzo, executive secretary.

In the previous fiscal year, elections were covering 10,900 state employees and 9,865 municipal employees in 148 city and town cases and nine affecting state agencies. By contrast, the certification load in the private sector was negligible.

Past attempts to abolish the board and reorganize it have foundered in the Legislature. A new attempt is likely to win some attention this year.

It calls for an administrator co-terminous with the governor, a five-member commission to replace the current three-member panel and adequate examiner, stenographic and legal staff, preserving the rights of present employees.

It would set up rigid standards for both the administrator and the commissioners — standards which would exclude Mrs. Miceli and Alarie from serving on the new panel. Single members could hear and decide cases. Commissioners terms would be staggered.

That there is partisan political motivation behind the reorganization attempts is, of course, obvious. It would create a $21,000 job as administrator and increase commissioners' pay from $9,000 ($10,000 for the chairman) to $20,000 ($21,000 for the chairman).

Should a Democrat win the governorship in 1970, the reorganization would pave the way for partisan takeover of the commission the following year. For this reason the reorganization, which will have the support of organized labor, is likely to have a good chance of passage in the forthcoming session.

And if Commissioner Dwight's views are any guide to Sargent's thinking, the governor will probably sign it.

VII

Advocates of full collective bargaining rights for public employees — including the right to strike and the primacy of contract terms over Civil Service rules and legislative enactments — base their argument on the analogy between the government worker's job and the same job done by an employee in private industry.

What difference does it make, ask the militants, whether a dishwasher handles the government's dish or some restaurant's? He gets the same dishpan hands and the same sore feet.

The position is summed up more formally in the Massachusetts Teachers' Association's lawsuit to overthrow the law barring public employee strikes on constitutional grounds.

Citing the First and Fourteenth Amendments, MTA says in effect that to deny the public employee a right (to strike) enjoyed by his private counterpart is unjust and unfair, a denial, in fact, of a civil right.

The same argument would presumably apply to other limitations on public employee collective bargaining. And the argument that authorization of strikes would in practice produce fewer work stoppages and more effective bargaining is persuasively made.

There is another view, however, a view few in politics care to advance lest they face organized retribution at the polls.

If government has become a service industry, which it largely has, it differs from other service industries in that its product must be provided by law, whether or not there is a market for it. And, whether by contract or by statute, the employees providing the service must be paid.

Government employees do not provide service in the same way that, say, cleansing shops do. They forbid, regulate, inspect, require, prevent, seize, investigate and sometimes harass. Often their services are resented, opposed in the courts, circumvented and ignored by a public that wants no part of them.

If a cleansing shop's employees raise the operator's cost of doing business beyond the going rate, people will take their clothes elsewhere. If cleansing itself becomes prohibitively expensive, people will go slovenly or dress in wash-and-wear. And the cleansing shop will go out of business.

This is not the case with government, whose customers, not excluding public employees, are also capitalists, employers, and, through legislatures, entrepreneurs and boards of directors.

Public services do not go away when demand for them ceases (if it ever existed). Statutes remain on the books, job descriptions remain in tables of organization and jobs remain filled.

Demand Unimportant

Indeed, some students of the current picture trace the anger and frustration behind much militancy to the very uselessness, triviality and monotony of the tasks performed.

The "service" provided by the public sector is provided regardless of whether government finds new things to do. More and more individuals find self-perpetuating roles in public service — roles which must, by law, be played and paid for.

As organized public employees grow in numbers, political solidarity and power to exact compensation from the general weal, it is difficult to predict where and how limits can be set to their aspirations.

Management in the public sector in a democratic society is delegated in theory to the elected representatives of the people. This system has not been working very well.

More candidly than most, teachers are taking the position that such management of public business is clumsy and obsolete. They see in collective bargaining a means for achieving professionalism in government work — concepts difficult but perhaps not impossible to reconcile.

In other fields, too, the notion of employee participation, usually described in terms hitherto reserved for the medical, legal and scientific professions, is gaining wide acceptance — always to the disadvantage of executive, legislative and budgetary control.

On the day this was written, the American Federation of Teachers, from Washington, announced a $10,000 starting salary and a four-day week as collective bargaining goals. And it seems unlikely, in view of recent experience, that a policeman will put on a uniform for less than $12,000 after 1970.

The Massachusetts State Employees Association is bucking for a 35-hour week, with overtime after seven hours. Its AFL-CIO competitor can be expected to raise this bid as the two organizations battle for members and dues.

Going Along

Faced with this new mobilization of power, government in Massachusetts has tended to ignore the problems at the state level while the cities and towns flounder, fuss and holler for more aid from Beacon Hill.

Where a conventional employer would take measures to do battle with unions, the public employer — who needs not compete in the marketplace — finds it simpler and politically more judicious to go along.

Meanwhile, leapfrogging, whipsawing and double-decking, flexing their political muscles, endorsing and backing candidates with word and dollar, the people's servants move steadily toward becoming their masters.

This is admittedly an extreme view. But given the youth and rate of growth of the labor movement in public service, it is not so fantastic as it seems.

Certainly it would not be too much to ask of public employee unions that they tell their members and the general public what they do with the dues they collect. New York has such a requirement.

Certainly it would not be too much to ask of the Legislature that it debate fully and courageously the key issue of whether the Civil Service system, as the state has come to know it, is to survive or be replaced in pragmatic essentials by collective bargaining.

Certainly it would not be too much to ask of the executive branch of the government — including department heads at all levels who tend to be more loyal to their subordinates than to the taxpayers — that they adopt a management attitude in collective bargaining situations.

And it does not seem, at least to the writer, unreasonable to consider whether or not, as a contractual condition of employment, government workers should be required to waive the right to strike on penalty of losing rights like seniority, accumulated leave, insurance, pensions or other precious fringes.

Such a suggestion sounds radically conservative. And yet, in the future, if the people's writ is to continue to run, the government must be able to govern itself and control its own growth and cost. Lacking the built-in controls of the market, government as employer more and more seems weaponless against its adversaries. After all, no one is required to work for the government.

In the light of recent experience in New York, and, perhaps more instructively, in Italy and Canada and earlier in France, an enlightened government would do well to consider how much additional power it can afford to cede to its employees.

If it does not, city, state and nation face the unrestricted proliferation of a self-perpetuating bureaucracy, determining its own pay and powers, an arrogant and irremovable elite, insusceptible to popular control and responsible to no one.

Better perhaps, the amiable and incompetent hack than the civil servant on the Prussian or Austrian model, an authoritarian, bombproof official secure in his status, dispensing government as it suits him at a cost wholly unrelated to benefit conferred.

Franz Kafka would understand Government Center.

4

The Impotent School Board

The chapter which follows was written by Robert Bendiner, a member of the editorial board of the New York Times. It was adapted from "The Politics of Schools: A Crisis in Self-Government", which was scheduled to be published by Harper & Row, Inc.

31

Of all the agencies devised by Americans to guide their public affairs, few are as vague in function as the school board and few take office in an atmosphere of such resounding indifference. Yet, ironically, probably no other unit of government is capable of stirring community passions to so fine a froth.

This strange effect, often disproportionate to the board's actual impact on events, is at least partly explained by its unique role in the processes of government. For the school board is really neither legislative nor administrative in function, and only in the most limited way, judicial. Almost entirely outside these normal categories, it has homier and less precise functions not usually found in civics textbooks at all: it is local philosopher, it is watchdog, and it is whipping boy.

For at least a century before the current educational revolution began, American school boards led reasonably tranquil official lives, addressing themselves for the most part to such matters as building plans, voucher-signing, plumbing repairs, and the eternal raising of funds. But they left educational policy and the day-to-day operation of the schools to the superintendent - no self-respecting superintendent would have had it otherwise. More important, the boards generally managed to keep their commitments within the bounds of their resources.

The urban or suburban school board of today, by contrast, must frequently commit itself to actions that it may not be able to carry out, that cost money it does not have and may not be able to raise. It has been pushed into that most hopeless of all positions for a unit of government - an incongruity between responsibility and power. From the consequent strife on several fronts - equality of opportunity, finances, and the new militancy of teachers - the question that inevitably arises is whether the local American school board, at least in its present form, can - or should - survive.

It is the last of these that I would deal with here. For within the past decade the long and genteel tradition of the school board has been most drastically shaken up by the swift development of collective bargaining and the introduction of the omnibus contract. It is common now for a board to be engaged for months in haggling with canny negotiators brought in from distant headquarters of the National Education Association or the American Federation of Teachers. And it must not only pass on such large issues as salary schedules and grievance machinery, but in many cases negotiate the minutest aspects of the school day. (Will all teachers be exempt from lunchtime cafeteria duty? Will the school system reimburse teachers for dentures lost in line of duty? etc.)

The result, often enough, is that a board finds itself desperately trying with one hand to resolve conflicting interests in the community - in the matter of racial balance, for example - while trying with the other to satisfy its faculty on a proposed contract running to several hundred items. And failure to satisfy the teachers on some of these points may mean an occurrence unimagined until this decade: a protracted teachers' strike, complete with shouting pickets, court orders and counter-orders.

So fast and feverish has been the trend toward teacher militancy that it is hard to appreciate how fresh a phenomenon it really is. As recently as 1961 the National Education Association took the restrained view that: "The seeking of consensus and mutual agreement on a professional basis should preclude the arbitrary exercise of unilateral authority by boards of education and the use of the strike by teachers as a means for enforcing economic demands." And the American Federation of Teachers, whose affiliates were and are essentially trade unions, was hardly more militant than the NEA, which prided itself on being a professional rather than a labor organization.

Since then all such academic inhibitions have gone up in the smoke of battle. Two teachers' strikes occurred in 1965, sending shock waves through the fraternity. In 1966, there were 33. In 1967, the lid blew off, with more than 80. In the spring of 1968, when most eyes focused on Morningside Heights, 30,000 teachers throughout Florida participated in a "mass resignation," described by Dr. Sam M. Lambert, executive secretary of the NEA, as "one of the biggest show-and-tell demonstrations in the history of education." The AFT's chief contribution to teacher militancy that spring was a two-week strike by the Pittsburgh Federation of Teachers to back demands for a collective-bargaining election.

By last fall the teacher rebellion had reached the point where 170,000 men and women - ten percent of the nation's teaching force - were on the picket line when schools reopened after the summer vacation. Although strikes of varying duration punctuated the fall season, all of them paled beside the three mammoth strikes called by New York's United Federation of Teachers, which kept some 50,000 teachers and a million pupils out of classes for 36 of the first 48 school days of the term.

It is not a simple matter to explain this sudden turn to aggressive trade-union tactics by people whose professional association had once stated:

> The teacher's situation is completely unlike that of an industrial employee. A board of education is not a private employer, and a teacher is not a private employee. Both are public servants.

There had to be reasons for the shift. In any case of labor unrest, the source of trouble is reasonably certain to be insufficient money or dissatisfaction in the work, or both, the two factors often operating in a somewhat reciprocal fashion. Teachers used to be satisfied with low pay, or at least they were not acutely dissatisfied with it. They either shared a general view of their inadequacy that amounted almost to a national tradition, or they gained enough personal reward from their efforts to compensate for their marginal salaries. But society changes for teachers, as it does for the rest of us. A married man working in a Manhattan school in 1969 cannot be expected to have the same view of the world (and his place in it) as that of an Iowa schoolmarm of the 19th century. His school is not the intimate, personal haven that gave her a feeling of warmth and a sense of belonging. On the contrary, it is huge, mechanically administered, organized from the top down, and usually distant from his own community.

At the same time that the modern teacher's alienation grows in intensity, the demands on him grow likewise. He is expected to make up in the classroom for all the tragically damaging elements in his students' environment: bad housing, undernourishment, lack of stimulation at home, and self-images warped by the gross injustices of society. In the core cities, moreover, he is likely to face disciplinary problems undreamed of 20 years ago.

Academically, he must be far better prepared than his early predecessors, not only because subject matter is vastly more comprehensive, but because longer preparation for a teaching career is a condition of his hiring. The typical classroom teacher today has nearly five years of education beyond the high-school diploma, where, not so long ago, two years of normal school sufficed.

True, the training of teachers is less demanding than that of other professionals, and education majors are generally rated low in academic proficiency among undergraduate groups. Yet there can be no doubt that by skill and preparation a teacher deserves better treatment than he gets from a society that more than adequately rewards its football players, television repairmen, and swimming-pool salesmen.

Teachers' salaries have gone up every year in the past decade - 61.6 percent from the school year 1957-58 in dollars, 38 percent in purchasing power, based on the Consumer Price Index. In 1957-58, 59.1 percent of classroom teachers were getting less than $4,500 a year; today not more than 2.3 percent are below that level, and about 21 percent are making more than $8,500.

Even so, neither of the great teacher organizations is prepared to concede that the upward movement has more than gotten up a head of steam. A probable factor in the growing militancy is the increase in the number of men teachers, whose financial needs are likely, sooner or later, to be greater than those of women (and whose urge to act on those needs is correspondingly sharper). While the number of women teachers increased by 38.4 percent in the past decade, the number of men went up 75.9 percent. And many of them, especially the younger ones, are fresh from campuses where revolt is fast becoming an academic way of life.

UFT Shows the Way

It is unlikely, however, that teacher militancy would have come to much if New York City's United Federation of Teachers, a local affiliate of the AFT, had not demonstrated that teachers could strike, whether or not the law prohibited such action, and that it could win its demands in precisely the same way that similar demands are won by coal miners, teamsters, packing-house workers, and newspaper reporters.

In 1960, the Federation, just formed out of a merger between the New York Teachers Guild and the High School Teachers Association, revealed the vacillation of the city's Board of Education and the corresponding effectiveness of a walkout. The issue was over the principle of collective bargaining and the Federation's demand for an election to determine the choice of a bargaining agent. The Board readily assented, but the union, charging undue delay, exhibited its youthful muscle by calling for a one-day work stoppage. Less than 5,000 of the city's 37,000 teachers responded, but when the Board yielded without a hint of disciplinary action, the shape of things to come was clearly discernible.

In the ensuing election, the UFT made a showing of some 20,000 supporters, which was about four times the number of its dues-paying members. When bargaining negotiations broke down in the spring of 1962, the UFT was ready for action. Here was no "professional holiday," or "withdrawal of services," but a full-fledged strike by 20,000 teachers. By the end of the first day, both the Mayor and the Governor felt compelled to bring about an agreement on salaries, though the full terms of the contract were to require many more weeks of detailed negotiation.

The New York success had an electric effect on teachers throughout the country - in the NEA as well as the AFT. Both organizations hastened toward militant action, and competition beteeen them, the need to outdo each other in the gains promised to teachers, has since become a prime source of difficulty for school boards.

In 1967, the NEA sharply revised its stand on the strike as a weapon for teachers. At its convention that year it sounded this trumpet call: "The NEA recognizes that under conditions of severe stress, causing deterioration of the educational program, and when good-faith attempts at resolution have been rejected, strikes have occurred and may occur in the future. In such instances the NEA will offer all of the services at its command to the affiliate concerned to help resolve the impasse." If the statement fell short of trade-union purity, it was still a far cry from that "seeking of consensus and mutual agreement on a professional basis" which had formerly been the Association's closest approach to class warfare. By 1968, it is worth noting, a poll showed that the precentage of public-school teachers endorsing recourse to the strike rose to 68.2, up 15 percentage points from 1965.

The result is that the atmosphere surrounding public education is undergoing a marked and acrid change. Without desiring it or expecting it, the school board finds itself in an adversary position. The "old buddy" atmosphere that once characterized a board's relationship with employee groups has largely given way to a wary suspiciousness. One superintendent, Dr. John Blackhall Smith, of Birmingham, Michigan, provides this glimpse of that atmosphere:

> The docile, timid teachers' committee of three years ago has been replaced by a knowledgeable, hungry negotiation team, extremely well-trained, and headed by an aggressive, well-rehearsed, full-time executive of the local Association or Federation.
>
> Boards of Education find themselves unprepared, uncertain, disorganized, unorganized, and badgered from all sides with suggestions, directions, and ample criticism. In the middle of it is the superintendent of schools who finds himself not only thrust into a role demanding great skill and training, but divorced from contacts and associations with his teaching staff and in some instances, even with his administrators.

Dr. Smith's description goes to the heart of the board's plight. Teacher organizations have at their disposal all the data and all the sophisticated equipment that their national organizations can buy. And anyone who doubts the scope of the NEA's operations in this respect need only visit the elaborate Washington headquarters of this "largest professional organization in the world," with its proliferation of 35 departments, 17 divisions, and 25 commissions and committees - all supported by some ten million members (dues are $15 a year), not to mention the income from publication sales and membership in the various specialized departments.

In contrast to this mammoth output of data and assistance, the individual school board relies largely on its local sources of information and the meager help it may get from its own National School Boards Association. This loose and sparsely financed federation of state boards is primarily a lobbying organization; it is in no position to give a board in trouble the kind of support that a local teachers' association can count on from its parent organizations, both state and national. Beyond these sources, the board must rely on information put out by those same teacher organizations with which they find themselves embroiled.

The hapless members of a school board, moreover, are by no means free to sit at the bargaining table all hours of the day and night. Engaged full-time in earning a living or raising their families, they cannot devote themselves exclusively to negotiations until fatigue sets in or a settlement is reached. And most trying of all their difficulties, rarely has experience equipped them for the subtleties and "gamesmanship" of collective bargaining. Unfamiliar with the jargon and strategems of the game, they often misread the signs of their opponents, mistaking a "maybe" for a "no" and a "no" for a "never." As Dr. Wesley Wildman of the University of Chicago remarked, it is a field in which "the curse of amateurism is rampant."

To be sure, the bargaining power is not entirely on one side; if it were, there could be no negotiations at all. Teachers in many districts, especially those far removed from the big cities, still regard the strike as unprofessional, illegal, or both, and this feeling may be turned to a board's advantage. Then, too, boards are coming to recognize that bargaining may not be their forte; they are relying more and more on hired negotiators whose skills match those of the teachers' hired professionals.

Yet there is little doubt that the balance is swinging sharply in the teachers' direction or that it might have done so much sooner if the teachers had perceived - and chosen to make use of - their natural strength. For the simple fact is that a school board faced with a strike has nothing of comparable strength with which to counter it. And what sometimes makes a board's position completely impossible is that it may be just as powerless to satisfy the teachers' demands as it is to oppose their ultimate sanction.

Even when a board technically has the resources to pay teachers what they ask (or to reach a reasonable compromise of those demands), it may feel that it ought not to do so at the expense of other claims on its funds - such as introducing foreign language in the elementary grades, expanding the remedial reading program, hiring additional personnel, giving closed-circuit television a tryout, or perhaps revising the curriculum to give a more profound view of Negro contributions to American society. The Board may be right or wrong in its choice of expenditures, but the choice is legally the boards' to make, and it cannot surrender it for the sake of good labor relations without abandoning its plain obligation. To all of which the teachers put forth the plausible counter-argument: if they are entitled to more money, they should not be asked to forego a raise in pay in order to subsidize other improvements that the community is unwilling to pay for.

While some nostalgically inclined boards may long for the days before teachers had to be dealt with as a highly organized and hard-headed group, no one expects those days to return. But more acceptance of collective bargaining as fact of life is not enough. When a school board decides that negotiating with teachers is henceforth to be a regular and major part of its job, it may draw a deep breath, as one does upon making a decision long resisted. But the breath should not be too deep, for the board will soon discover that its troubles have only begun.

Two stark truths confront a school board at the outset of its relationship with a teachers' organization:

-- Public-school teachers enjoy a natural monopoly; as a body, they cannot be replaced. Thus they are assured forgiveness even when the tactics they resort to are illegal or crippling.

-- As individuals, teachers are usually secure in their jobs by virtue of tenure. Therefore, if a board yields to teacher demands for the power to make policy, the teachers can exercise that power without assuming any of the board's accountability to the public.

Although these facts and the implications that flow from them clearly diminish a school board's bargaining power, a community's educational policy is still the responsibility of the board; indeed, it is a principal reason for its existence. The extent to which, for better or worse, that policy is modified or changed as part of the bargaining process is the extent to which the already diminished authority of the board is further eroded.

It is also apparent that the leaders of the two main teachers' organizations - the NEA and the AFT - have just this erosion in mind and that they consider it a fair subject at the bargaining table. In her inaugural speech, Mrs. Koontz stated the case bluntly: "In policy determination and in shaping the educational institutions, professional negotiation is not a luxury, it is a necessity." Teachers, she said, would no longer allow "decisions on educational issues, philosophy, and principles" to be made unilaterally by "self-styled experts and well-intentioned and ofttimes uninformed persons who are far removed from the realities of the schoolroom" - whether or not, it would seem, such persons were entrusted with that function by law.

The AFT's position has become equally sweeping, although, in the trade-union tradition, it concerns itself more with bread-and-butter issues than with educational theory. When I asked President David Selden where he would draw the line between what was negotiable and what was not, his answer was blunt and uncomplicated: "There is no line. Anything the two parties can agree on is negotiable."

That position might sound reasonable if if were not for the hard fact that a board, pressed by a hundred demands and the threat of a strike, might well agree to negotiate on matters that ought not be negotiated, in exchange for concessions in matters that should.

Boards do not as a rule balk at negotiating procedural issues that go beyond salaries and hours, so long as they clearly bear on a teacher's working conditions. They have yielded, for example, on such minor demands as a "mumps clause" (teachers who catch the mumps, measles, or chicken pox from their students will have only half of the school time they miss charged against their sick leave); twice-a-day coffee breaks; reserved parking space; and even a warning sign ("beep-beep") to notify teachers when their classrooms are about to be monitored from the principal's office.

But many board members find it an altogether different matter, and a violation of conscience, to yield to demands that teachers be allowed to elect their principals, or that they be given the decisive voice in curriculum or textbook selection, or in the recruitment, assignment, and disciplining of their colleagues.

A good case can be made that teachers, as professional educators, should have some voice in these matters. But should that voice be that of teachers as individual professionals, or of teachers as a trade union represen by an agent sent out from headquarters? Should the voice be advisory, or should it come in the form of demands? And if presented as demands, should they be argued and settled on their merits or put forward as chips on the bargaining table, possibly to be withdrawn in exchange for higher salaries, shorter hours, or improved fringe benefits?

One authority on the subject, Dr. Myron Lieberman, Director of Educational Research and Development at Rhode Island College, objects to teacher participation in policy-making primarily because the tenure they have insisted upon serves to exempt them from responsibility to the public. "If teachers want to be equal partners in formulating educational policy, then they should give up any right to teacher tenure because in a democratic society we ought to have the right to change our policy-makers."

The profession, however, shows no intention of pursuing this line of thought. Indeed, the NEA president's comment on the subject at last year's convention tended strongly in the other direction. "We must have a secure profession," Mrs. Koontz exhorted her colleagues. "Tenure laws must be developed in every state and strengthened to cope with change. Such tenure laws should be proposed or enacted in every state by 1970."

Beyond the demands of militant teachers, the school board, faced with a population explosion, all combining to send costs skyrocketing, finds itself still trying to meet those costs largely out of local property taxes, a fast fading source of revenue. From all of which it may well appear to the reader that there is little reason for the local school board to continue at all but for the fact that no good alternative is in sight. This would be a discouraging conclusion indeed, but happily one that is hardly justified.

An alternative _is_ emerging - slowly, with variations and difficulty, but with promise, too, because it corresponds in school government to the evolutionary change that is even more slowly and painfully emerging on the political front. I refer to that still groping movement in the country's great metropolitan areas toward some sort of internal cooperation - between city and county, between city and suburb - a cooperation ranging from the loosest agreements on specific matters all the way to consolidation, federation, and metropolitan area government, that new political entity that has been cropping up here and there under the name of Metro.

Giving an air of inevitability to the development in one form or another is the stark fact, becoming starker daily, that without it government will ultimately be impossible in the urban complexes where 70 percent of the American people already live. The Advisory Commission on Inter-Governmental Relations observed, as early as 1961, this consequence of the trek to the suburbs: "The resultant congestion and sprawl of the urban population and the interdependence of communities within the metropolitan areas have made it increasingly difficult for local governments to deal with many functions on less than an area-wide basis." The functions that might be metropolitan would vary from place to place, the commission reported, but "a concern for equality of educational opportunity and the most efficient planning for the provision of educational services (is) a major motivating force" in the trend. A succeeding commission, made up of high officials from all three levels of government, subsequently urged that school taxation in metropolitan areas be assessed regionally and that school-financing districts spanning city and suburb be promoted by state and federal action.

It takes no stretch of the imagination to see how such a uniform regional tax - the revenue from which would be distributed with full allowance for special needs - would go far to solve the problems of Buffalo and Baltimore, of Boston, Chicago, and Philadelphia. For everywhere the picture is the same, with the metropolitan area constituting, in Robert J. Havighurst's phrase, "a middle-class suburban doughnut surrounding a central city slum ghetto." Referring specifically to Boston, Peter Schrag has written, "There will be no genuine public education in the city if suburban populations remain perpetually exempt from the obligation to support it."

Not least among the virtues of a metropolitan area school system - before we come to its difficulties - is the comparative freedom it would provide from those extreme local pressures and inhibitions which are to be distinguished from the perfectly legitimate pressures that are part of the democratic process. Here the essence of the matter is contained in Madison's famous dictum: "Extend the sphere, and you take in a greater variety of parties and interests," thereby reducing the dangers of factional control, whether by a militant minority or an insensitive majority.

In a small district, the pressure from parents and less altruistically interested parties may operate to keep a school system tied up in a provincial straitjacket. Complaints about sex education, particular approaches to reading, or the morality of books assigned in literature courses - all affect local school policy without necessarily reflecting in the least the sentiment of people even ten miles down the road.

Myron Lieberman stated the proposition boldly in arguing that it is not the professionals who are responsible for introducing trivia into the curriculum, as some of their critics contend: "No diagnosis could be more stupid. Subjects which have no real content or professional justification do not get included because school personnel *ignore* public opinion, but because they *follow* public opinion. The criticism that school administrators try to engineer public opinion to put over their own curriculum ideas is absurd; this is precisely what they ought to be doing, ard are not." He saw academic freedom assured only in that largest of all districts - the entire nation.

The idea that a federal system, subject at any time to the intervention of remote officials, not to mention Congressional committees, would be totally free of pressure seems naive, but Lieberman's point concerning provincial tyrannies is surely well taken, especially in the light of his further observation:

"It is a striking fact that in England which has a national system of education, teachers are opposed to local control precisely because they fear that such control would undermine academic freedom. Meanwhile, teachers in the United States continue to act as if local control must be maintained inviolate lest academic freedom (which they do not possess) be imperiled."

Not least among the pressure groups with which local boards are often unable to cope, although on a different level entirely, are, of course, the teachers themselves. Would a metropolitan area board do better on this score than a dozen contiguous but wholly separate districts? From the experience we have to go on, it would certainly seem so.

With the scope of influence greatly extended on both sides of the bargaining table and the stakes greatly increased, it is likely, to begin with, that professionals would take over on both sides. The teachers, moreover, would not be able to whipsaw one little district against another in an endless game of raising the ante - while the board, for its part, would presumably feel the weight of negotiating not for a restricted locality but for a major area. Bigness has its drawbacks, but the experience of industry suggests that in labor relations bigness may also be a factor for stability (although too cozy a working relationship between giants could admittedly lead to stagnation).

Finally, teachers are likely to be pleased in the long run by the steady rise in standards that a financially more secure metropolitan arrangement can assure. And boards, in turn, should feel a bit safer for the reduced mobility of teachers no longer free to move to an adjoining district half a mile away if they are less than completely satisfied.

What possible drawbacks can there be to a school system which could deal far more effectively than the present localism with the requirements of integration, collective bargaining, academic freedom, and the adequate and equitable financing of public education? First, there is the admitted difficulty of making itself acceptable to those who don't want their taxes to help pay for the education of other people's children. That is a question of tactics, which will be considered presently. Substantively, the Metro idea is charged with one major sin: it is big, and therefore presumably bureaucratic and remote from the people.

At a time when "community control" is the cry in the cities and hardly an urban politician runs for office without paying lip service to decentralization in some form or another, why invite the dangers of an even larger district than the city? How can the small be protected within the large? How can localism be retained within metropolitanism? For a view of that art in practice, one can turn only to the city of Toronto and its environs, where the emphasis is not so much on bigness and supergovernment as it is on the warmer and more attractive concept of federation.

The Toronto Story

For 15 years a great urban complex in Canada has been experimenting with, and constantly improving, a system of urban government that political scientists in the United States have only talked wishfully about, as though it were a utopian scheme suitable for pleasant speculation. I refer to the Municipality of Metropolitan Toronto, a political entity covering 240 square miles and embracing, besides the city itself, the five boroughs of North York, Scarboro, Etobicoke, York, and East York.

How Metro came into being may be sketched briefly. In the decade that followed World War II, the Toronto area jumped in population from 942,762 to roughly 1,300,000, an increase of some 38 percent. But while the city proper gained fewer than 200 souls in that time, the suburbs rocketed up by 137 percent. The impact of this explosive growth staggered the independent municipalities that ringed the city. Most of them were financially unable to maintain anything like adequate municipal standards, and all of them suffered acutely for lack of unified services. Within the single county that contained them there were no fewer than 113 administrative bodies and 30 separate transportation lines. Every suburban police force had its own short-wave length, so that a general alarm from Toronto had to be telephoned to each local police department, which in turn sent out a warning to its own cruiser cars. Water supply was so meager in North York that thickly settled areas were obliged to use septic tanks intended for rural areas, and the inadequacy of sewage disposal in general had already polluted two rivers and the shorefront of Lake Ontario.

As the crisis deepened, the Ontario government warned that unless some form of cooperative government were developed between city and suburbs, the province would step in and do it for them. After much wrangling, once so bitter that Toronto threatened to cut off a suburb's water supply if it did not take back its slurs on the city, the Provincial government acted. The Ontario parliament passed Bill 80, which has served since 1954 as the charter for the Metro system.

Under the new arrangement, each of the quarreling communities retained its local government and continued to guard its identity as jealously as a Georgian defending states' rights. But Metro taxes, based on property assessments made uniform for the entire area, were paid to the new unit of government, which in turn took over area-wide municipal services - transit, water supply, sewage disposal, some roads, and at least the capital financing and location of new schools.

Since then, finding more advantage in the arrangement than it had evidently expected, Ontario authorities and legislators have considerably extended Metro's hand in the operation of the schools. Yet the control is not that of a remote centralized bureau, autocratic in its decisions. Rather, the system is one of autonomy within a federation, with well-defined limitations on each.

Avoiding both the extremes of centralization and decentralization, the school system is a two-tiered arrangement in the sense that all members of the Metro school board serve on two levels. Each of the six local boards sends its chairman plus, in the case of Etobicoke and Scarboro, one additional trustee appointed by his fellows. Two such additional trustees are allowed from North York, in proportion to its population, and five from Toronto. Three members representing the separate, or non-public, schools round out the Metro board, which elects one of its number as chairman.

Originally the Metro school board borrowed money centrally to meet capital costs, collected taxes from the constituent communities through the Metro Council, and distributed funds to the local boards in the form of "maintenance assistance payments" based on the number of pupils in attendance - not too different from state aid in the United States, except that it averaged 60 percent of a local board's revenues, considerably more than most of our states are willing to pay to equalize the load.

Nevertheless, the plan did not work well enough. It achieved a rough dollar equality but fell considerably short of the kind of distribution that real equality of opportunity required. Under a revised scheme adopted two years ago, the role of the Metro board is to a far greater extend one of judgment. In the words of W. J. McCordic, its dynamic executive secretary and chief administrator, the board's function is "to secure the funds to finance an educational program, to apportion these funds fairly and equitably in relation to need, and to carry out these numerous responsibilities in such a way as to strengthen rather than weaken the autonomy and viability of the six component school systems."

In practice each of these local systems draws up its own operating budget, including whatever new approaches, experiments, or additions it may see fit to initiate. The budget is passed on to the Metro board and defended there by the local's member-representatives. The board as a whole, sitting as a kind of judicial body, tries to reconcile the local district's budget with the needs of the other area boards, eventually putting them all together in a Metro school budget designed to meet special needs and still strike a fair balance. This it passes on to the Metro Council, which is charged with raising the required revenue. No doubt some logrolling occurs - a tacit understanding, say, that the representatives of Scarsboro will support a special request in the Etobicoke budget in return for reciprocal consideration the following year. But, as McCordic says, "What's wrong with that?" It is at least give-and-take, rather than demand-and-reject.

Should a local board feel genuinely aggrieved, two courses are open to it. It may carry the matter to the Ontario Municipal Board, a quasi-judicial body which acts as a kind of ombudsman, or it can impose an additional tax of up to 2.5 mills on its own local citizenry for some special purpose denied by Metro.

There is flexibility in the Toronto arrangement which allows a balancing of appropriations that is politically refreshing. "Some would have us apportion the funds by a simple formula method of so much per pupil for each area board," explains Barry G. Lowes, chairman of the Metro school board. "Such a formula would be clear dereliction of our duty and, furthermore, it simply could not do the job of sharing funds equitably." After the initial agitation for per capita allocations, he says, "the districts learned to yield to the special needs of other areas," whether it was additional teachers for fast-growing North York or junior kindergarten classes for non-English-speaking children of the inner city.

Technically, collective bargaining is still carried on between the teachers and their local boards. But in the name of coordination there has been a steady drift toward conducting negotiations at Metro headquarters with the assistance of Metro's Salary Committee. Slowing up this trend, no doubt, was the fantastic division of the teachers themselves into numerous groups - elementary school men, elemenatry school women, secondary teachers of both sexes, English Catholic school men, English Catholic school women, French Catholic school men, French Catholic school women, etc. Fragmented, they found it easier and more personal to deal with the local employers. "We were comfortable with our own little boards," said Robert Brooks, president of the Toronto district of the Ontario Secondary School Teachers Federation. "They were close to local problems, and we were afraid of losing contact with the trustees." Besides, although they are not nearly as militant and aggressive as their opposite numbers south of the border, the teachers could hardly avoid seeing a certain usefulness in pitting one district against another to their own advantage.

For its part, the Metro staff soon saw the extreme difficulty of passing judgment on budgets featuring wide variations for teachers' salaries. "I cannot imagine the borough boards maintaining a satisfactory relationship with each other if they remain in competition in the matter of teachers' salaries." McCordic said in a public speech. With a certain amount of gentle prodding, the teachers were gradually persuaded to move toward standard scales for the area. Under no legal compulsion, they began holding joint talks with their own school superintendents and members of the Metro board. In 1968 secondary and elementary school teachers, once characterized, respectively, as "Brahmins and untouchables," shared a common bargaining table for the first time.

In the end negotiating with Metro seemed the sensible and practical thing to do. After all, as Brooks conceded, "That's where the money is." The result is that elementary schools, through wholly voluntary action, now have virtually the same salary schedules throughout the area, and secondary schools are close to achieving the same result.

If Metro is vigorously promoting equality of opportunity, if Metro is in effect negotiating with the teachers, and if Metro is passing on budgets and fixing financial priorities on the basis of its own value judgments, what is left to the autonomous boards?

Ask a Metro official that question and he will tell you, as McCordic told me, "It is a matter of starting the process from the ground up rather than imposing it from above. Budgets originate locally, based on the local boards' philosophy and sense of their own communities. Their representatives on the Metro board have to defend those budgets and they may not get all they want but the color and flavor of their respective systems are preserved." Variations, innovations, and competition are not only possible but encouraged. "We need this friendly, stimulating rivalry," Barry Lowes said. "For if a grey smog of uniformity gradually settles over Metro, then we shall have failed."

Certainly Metro has had its critics and prophets of doom. City politicians were from the first given to rousing the electorate with reminders that Toronto contributed more in Metro school taxes than it ever received from the Metro board. Other critics argued that, unless a local board left a good deal of fat in its proposed budget, it would almost surely find itself shortchanged after the Metro board had done its job of paring. And there were always those who saw in any degree of centralization a forewarning of more to come.

The criticisms were hardly basic. Of course some districts give more than they get. That was the essence of the plan. An unequal distribution of dollars for the sake of real equality was one of its fundamental purposes. Yet, for all the complaining by city politicians, the fact is that few communities in the United States have done a better job than Metro of rebuilding and renewing the schools of their inner city. Parts of metropolitan Toronto would not have survived without it.

Add to these basic achievements the fact that Metro has succeeded in cutting down class size throughout the area, more or less satisfied the teachers, provided considerable improvement in facilities for handicapped pupils, and developed original and economic concepts for school construction; add further that in the first full year of the new Metro system not one local board was required to reduce its original budget, and it becomes apparent why such fears and criticisms as existed at the outset have grown fairly dim - dim enough for the reasonably cautious Barry Lowes to take office in 1969 with the words: "At the inaugural meeting two years ago . . . I asked the question that was on all our minds: 'Will Metro work?' A year ago I said that we still did not know! Tonight I would like to preface my remarks by saying that, on the basis of evidence generated in 1968, the question is no longer relevant. The answer is obviously yes - a resounding yes!"

More subdued, but just as convincing, was the comment of Barry Zwicker, education writer of the Toronto Star: "Metro has worked out so well that not much is written about it."

Will it Work Here?

How applicable is the Toronto experience, and the concept of federation, to the problems of the American school board? There are differences, to be sure, between the situation of Toronto and that of our own cities. The Canadian metropolis does not have quite the extensive poverty-in-the-midst-of-plenty that marks our greatest urban centers, nor has it the large Negro enclaves that pose for us the tremendously difficult problems of a damaging racial segregation. And, finally, Toronto's suburbs prior to Metro were more in need of relief than the inner city, whose sources of revenue were not yet as inadequate as our to keep pace with its mounting social needs.

But to state these differences is merely to say that Toronto was at an earlier stage in the same process that afflicts our own big cities and that Metro may well have served to arrest its downward course. What is more, the balance in the United States is beginning to shift - with the suburbs, especially those closest to the line, beginning to show the symptoms of distress that have afflicted the inner city. The growth *rate* of the non-white population in the suburbs is already greater than it is in the central cities, producing the usual pattern of a white middle class fatuously fleeing to outer suburbia, with segregation, loss of local revenue, and decay resulting.

Meanwhile, even in outer suburbia itself, rejection of the school budget has almost become a rite of spring. And collective bargaining, under threat of a teachers' strike, is rapidly reducing school boards to a condition of chronic hysteria. Peter Schrag is surely right in his prediction that "suburban isolation is but a temporary luxury; ultimately the agony of the city will make itself felt in the periphery as well." In any case, it is academic to debate whether public education is in greater ultimate danger on the inner or outer side of the city line, when it faces - on both sides - grave problems that can only be solved in cooperation.

To approach in a more positive way the question of Metro's applicability, one need only picture to himself the workings of the two-tiered system in any of our cities - let us say Philadelphia, to choose one where we know there is a wide gap between what is spent on pupils in the central city and in the opulent areas surrounding it.

A Metro school board, if it had enough suburban representatives to balance those of Philadelphia proper, would have at its disposal tax money, assessed at a uniform rate, from the entire district - central city, Main Line, and all. And these it would distribute with an eye to equality of educational opportunity, which is not the same thing at all as guaranteeing to turn out equally educated Philadelphians, but only a step in the direction of social justice long deferred. Between core city and suburbs there would have to be that give-and-take which is a tempering force as well as a *modus operandi* in representative democrary rather than the anarchic individualism that passes often enough nowadays as "participatory democracy."

New York City might well present special problems that would defy the Toronto solution. As a single district within a metropolitan scheme it would still have difficulty in governing its own far-flung system or even in representing it adequately on a common regional board. But the very existence of such a board would make it far more reasonable to break the city system into a number of autonomous districts, each of which would belong to the Metro system as a whole and be represented on its board. Decentralization under a centralized but *representative* authority would be the formula, with regional wealth and talents to draw on and regional space for maneuvering. Harlem would get some of Scarsdale's money, but Scarsdale's member would have a check of what Harlem did with it. And vice versa.

Granted all the advantages of metropolitanism and the good sense of federation, there is no doubt that it would be somewhat lopsided in its benefits, at least for a while. It would profit the poor district at the expense of the rich, the city at the expense of the suburb, Chicago at the expense of Winnetka, Boston at the expense of Newton, Detroit at the expense of Grosse Point. The question arising from this circumstance is not a moral one - the only immorality is to continue allowing, as we do now, the accident of geography and available taxable wealth to determine a child's educational possibilities. The question is the hard practical one of how the Winnetkas, Newtons, and Grosse Points are to be persuaded to enter into arrangements that would so obviously reduce their present advantage.

It is in the power of the states, subject to their various constitutional limitations, to do what needs to be done in the way of school redistricting, just as it fell to the Ontario government to force the metropolitan area system on the less than enthusiastic authorities of Toronto. But it is the legislatures that would have to act, and they are not inclined to coerce suburbia for the sake of the cities, even when their state constitutions permit.

What may force them to act, among other factors, is a possible ruling by the courts, in a pending Detroit case or some other suit, that present inequalities are a violation of the federal Constitution. In that event they could establish metropolitan area school districts without going so far as to impose complete Metro government. Indeed, Vermont and New Hampshire recently persuaded the United States Senate to pass a bill allowing them to merge school systems now separated by the state line. In most cases, no constitutional change would be required to introduce the carrot-and-stick technique invoked successfully by California's Unruh Act, which not only permits but encourages the merging of separate school districts by referendum. What can be used to bring town and town together could be used, so far as schools are concerned, to merge city and suburb.

Alan K. Campbell suggests that the cities themselves might do a little trading toward this end, agreeing to drop or defer a commuter tax, for example, or to let suburbs tap their water lines and make other such concessions in return for a coalition of some sort in the field of education. Even a decision to spend more money on schools than the suburbs do, if the money can be had, would make federation more inviting. In any such effort the city should be able to count on the powerful support of its bankers, realtors, and industrialists, all of whom, as heavy taxpayers, have a lively interest in drawing suburban dollars into the school system in order to lighten their own load. Finally, there is the federal government, with an ample store of carrots to spend, through the Department of Health, Education and Welfare or the Department of Housing and Urban Development, on communities that strive in any imaginative way to improve the quality of city life - such as accepting a rational, in the end an inevitable, regional district for the improvement of their public schools.

In the end, however, it must be the people of the outlying areas themselves who come to grips with the problem - perhaps because they see the spreading blight of the cities encroaching on their places of suburban refuge. Or because they realize their dependence on, and their debt to, the city where they work and play but where they neither sleep nor pay taxes. Or even because they have awakened at long last to the moral wrong and imminent danger of allowing the children of the cities to grow up hurt and embittered.

If for these reasons, or any other, they accept their responsibilities as citizens of a metropolis, they may do more than solve the immediate problems of schools and school boards. It is more than just possible that they will have saved the city - and the suburb and the country with it. For the political entity of the city no longer coincides with the true locale of its people, the place where they both work and live. When that happens, government must gradually lose its grip and, in time, cease to govern.

Looking at our worn and seething centers of frustration, no one can doubt that we have already moved into this downward spiral or that the saving of our schools is only one aspect of the larger and more desperate need to save our cities.

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Board Authority and Negotiations — An Analysis

The report which follows was written by Reynolds C. Seitz, editor-in-chief of School Law Reporter, a publication of the National Organization on Legal Problems of Education (NOLPE). It first appeared in the Vanderbilt Law Review under the title, "School Board Authority and the Right of Public School Teachers to Negotiate - A Legal Analysis".

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Since 1935 with the passage of the National Labor Relations Act (Wagner Act) creating the National Labor Relations Board, millions of workers in the private sector of employment have been given the right to organize and to bargain or negotiate collectively with their employers on "wages, hours and other terms and conditions of employment." Today the right is widely exercised in the field of private employment. The opportunity for public employees to negotiate with their employers was not demanded too frequently until after World War II. At that time public employees, including teachers, began to press for the right, and the pressure has been increasing greatly year by year. The demand is identical to that made by employees in the private sphere, which resulted in the Wagner Act. The pressure is for the right to join organizations, including unions, and through such organizations to negotiate on wages, hours and other terms and conditions of employment.

Realistically, the hurdle erected at one time by some courts[1] and legislative bodies[2] to prevent public employees from joining employee organizations, including unions, no longer exists. Today it seems certain that the first amendment, through its protection of freedom to assemble, insures the right to join an employee organization.

The issue with which this article deals still remains: whether there is an infringement on the legislative power of the school board if it is required to negotiate with teachers through representatives of their choosing.

A logical approach to a discussion of the right of teachers to negotiate versus school board authority requires an effort to give some meaning to the term "negotiation". If the term carried only a connotation that teachers through their representatives can present certain requests to a school board or its representatives and both sets of representatives may talk about the requests to the extent the school board permitted and for such length of time as the board made available, there would be no need for this article. The law cannot prohibit any individual or group from making a request of an employer - even if the employer is a public employer. The law cannot keep the public employer from discussing the matter presented if it elects to do so. There is nothing new about representatives of teachers and school boards carrying on talks prompted by requests made by teachers. Indeed, in certain school districts this has occurred since the formation of the district.

If, however, "negotiation" means imposing a procedure which (1) removes from a school board the sole discretion as to whether to discuss with teachers their requests and how much time to make available for such talks and (2) dictates to the board certain responsibilities by way of responses, it becomes necessary to determine the legality of such imposition; that is, whether the procedure results in an infringement upon school board authority. Certainly, if the imposed procedure takes away from the school board the ultimate authority to fix hours, wages and conditions of work, it can validly be argued that there is an illegal infringement upon the legislative power of the school board.

The issue of infringement on school board authority can arise realistically only when a state has passed a statute which reflects the intent of requiring a school board to negotiate or bargain collectively[3] in good faith on wages, hours and other conditions of employment with a union or association that properly represents the teachers. Statutes which merely give the right to teacher organizations to "meet and confer" or to engage in "conferences and negotiations" with school boards on hours, wages and working conditions are easily susceptible to the construction that they lack an intent to require professional negotiations or collective bargaining.[4] Terms such as "meet and confer" and "conferences and negotiations" do not necessarily connote any particular technique. Therefore, it can be argued logically that such terms do not give rights to teachers which infringe upon school board authority.

The chief justice of the Wisconsin Supreme Court in writing the majority opinion in Joint School District No. 8 v. Wisconsin Employment Relations Board[5] shows clearly that such is his belief. It would require a very clear legislative history to import into "meet and confer" or "conferences and negotiations" the imposition of any particular bargaining or negotiating technique.

The type of statute which clearly shows a legislative intent to prescribe a certain negotiating technique for the school board is one which requires the parties to negotiate or bargain in good faith on wages, hours or other terms and conditions of employment. It is the term "good faith" which imparts intent into such a statute. These statutes do not require bargaining with individual employees; rather, they require exclusive bargaining either with the association or union selected by a majority vote or with a council comprised according to some proportional formula of individuals from the various organizations which teachers have selected as their representatives.[6] Such statutes avoid the constitutional attack that every individual has a right to present a grievance or demand to his governmental employer by reserving specifically such a right. The public employer is not, however, obligated to bargain with the individual. The right given to the individual employee is, nevertheless, a valuable one because the public employer can have the attitude of the individual in mind when it carries on negotiations with the representatives of the employees.

The National Labor Relations Board, the lower federal courts and the United States Supreme Court have given meaning to the good faith requirement in collective bargaining, which was dictated by Congress in the Labor Management Relations Act (Taft-Hartley Act).[7]

It appears improbable that the state labor boards and courts will require any more by way of negotiating techniques than what is required by the federal courts and the National Labor Relations Board in construing the requirement for good faith bargaining.

It becomes necessary, therefore, to look at the NLRB and federal court decisions delineating the techniques required by the dictate of good faith bargaining in order to predict the probable judicial construction of a state statute which orders good faith negotiating in the field of public employment. This study should permit a conclusion as to whether the requirements of such statutes constitute an infringement on school board authority.

Initially, the crucial question is whether the direction of a statute to bargain in good faith on wages, hours and working conditions imposes upon the school board a duty to make concessions. If the statute were to dictate to the school board a bargaining technique which required capitulation or concessions on certain demands of the representative of the teachers, it would be difficult to defend against the charge of infringement upon the legislative power of school boards.

Statutes are likely to speak out specifically against the making of concessions. The pattern followed by the statute may be that enunciated by the Taft-Hartley Act, which pointedly states that the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession."[8]

There is no decision on record which holds that good faith bargaining requires the making of a concession. This was, indeed, the attitude of courts even under the Wagner Act, which did not contain the specific pronouncement that good faith bargaining did not compel either party to make a concession. The United States Supreme Court in the Jones & Laughlin Steel Corporation case which upheld the constitutionality of the Wagner Act, stated:

> The Act does not compel any agreement whatever . . . . The theory of the Act is that free opportunity for negotiations with accredited representatives of the employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act itself does not attempt to compel.[9]

The NLRB and the courts did, however, tussle with another question which arose by reason of the directive of good faith bargaining in the Wagner Act. The question was whether the employer was obligated to make a counterproposal when it received the demands from the representative of the employees. Could counterproposals be equated to concessions, or were they something different?

In early cases interpreting the Wagner Act, the NLRB and the courts indicated an unwillingness to state flatly that counterproposals were not required. In enforcing an NLRB order which required the employer to bargain with the union and in reacting to the employer's refusal to make a counterproposal following rejection of the union's proposals, the United States Court of Appeals for the Fifth Circuit stated:

> A counter proposal is not indispensable to a bargaining, when from the discussion it is apparent that what the one party would thus offer is wholly unacceptable to the other. Still when a counter proposal is directly asked for, it ought to be made, for the resistance in discussion may have been only strategy and not a fixed final intention.[10]

The United States Court of Appeals for the Third Circuit commented:

> There must be common willingness among the parties to discuss freely and fully their respective claims and demands, and when they are opposed, to justify them on reason. When the proffered support fails to persuade, or if, for any cause, resistance to the claim remains, it is then that compromise comes into play. But, agreement by way of compromise cannot be expected unless the one rejecting a claim or demand is willing to make a counter suggestion. Refusal of an employer to make counter proposals on invitation of the union after rejecting the union's proposals may go to support a want of good faith on the part of the employer and hence a refusal to bargain under the Act. . . . [11]

The United States Court of Appeals for the Ninth Circuit uttered quite the same philosophy relative to counterproposals.[12] At the time the Taft-Hartley Amendments to the Wagner Act were being discussed, the chairman of the NLRB made it clear that he did not want to remove from the possibility of an unfair labor practice the failure to make a counterproposal. He argued that the failure to make such a proposal may be evidence of bad faith, whereas a failure to make a concession is not such evidence.[13]

The appearance of the provision in the Taft-Hartley Amendments specifically indicating that the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession"[14] did not directly answer the question as to whether the failure to make counterproposals was evidence of a failure to bargain in good faith. In Landis Tool Co.,[15] the NLRB was concerned about employer unwillingness to comply with a request for a counterproposal when the union indicated it was willing to consider "any counterproposal the employer might make."[16] A close analysis of all of the cases speaking of the failure to make counterproposals as evidence of bad faith bargaining, both under the Wagner Act and later, reveals that the failure to make a counterproposal is just one piece of evidence in the totality of employer conduct which may point to the fact that the employer did not come to the bargaining table with an open mind and a sincere desire to reach an agreement - which is the fundamental requirement of good faith bargaining.[17]

It is necessary now to relate the state of the law on the need to make counterproposals to our basic interest as to whether the statutory directive of good faith bargaining invades the legislative power of the school board. If state courts were to be influenced by certain broad language of decisions facing up to the need to make counterproposals in response to demands of the representatives of teachers and were to hold that a counterproposal must be made to presented demands, it would be difficult not to agree that a technique is being required that does infringe upon the legislative authority of the school board. If, however, independent evidence reveals that the school board has no intention of negotiating an agreement, it would not be improper for a state employment relations board or a court to find that a refusal to offer a counterproposal bolsters the evidence which adds up to a refusal to bargain in good faith. Such a holding would not seem to invade school board authority.

In most cases, of course, it should be recognized that if parties approach the bargaining table, counterproposals will be made voluntarily. The United States Supreme Court in speaking of collective bargaining has said: "(A)lthough it is not possible to say whether a satisfactory solution could be reached, national labor policy is founded upon the congressional determination that the chances are good enough to warrant subjecting such issues to the process of collective negotiation."[18] Similar philosophy prompts the prediction that if the school board enters the negotiations with an attitude of good faith, it will very frequently voluntarily make counterproposals. Since compulsion is not involved, there can be no issue of infringement on school board authority.

The dictates of good faith bargaining will always impose upon the school board, without any possibility of infringing upon authority, the duty to explain its position and give reasons for the stand it takes.[19]

A problem closely allied to the problem of counterproposals is raised by a fact situation which makes it possible to conclude that the representative of the employees comes away from the negotiating table with little of value. Can an employment relations board or a court in such circumstances infer bad faith in bargaining? The Fifth Circuit responded to this question in White v. NLRB. In that case the court said: "(W)e may assume that the Board could find that the terms of the contract insisted upon by the company . . . would in fact have left the union in no better position than if it had no contract."[20] The court was unwilling to find bad faith just because of such outcome. It quoted with approval the comment of the United States Supreme Court that "Congress provided expressly that the Board should not pass upon the desirability of the substantial terms of labor agreements."[21] The Fifth Circuit was careful, however, to qualify its position by stating that it did "not hold that under no possible circumstances can the mere content of the various proposals and counter proposals of management and union be sufficient evidence of a want of good faith to justify a holding to that effect."[22] It continued: "(W)e can conceive of one party to such bargaining procedure suggesting proposals of such a nature or type or couched in such objectionable language that they would be calculated to disrupt any serious negotiations."[23] It is important to understand that the facts in the White case revealed that the company showed a willingness to discuss all union proposals and explain its position on all points. The one dissenting judge in White cautioned against the need to protect against merely going through the motions of collective bargaining. He felt that the NLRB must take cognizance of the reasonableness of positions taken by the employer.

If the state courts follow the philosophy of the Fifth Circuit, it is apparent that good faith bargaining does not infringe upon school board legislative authority. This is so even if the courts acknowledge that White is right when it recognizes that there may be "possible circumstances" which would induce a board or court to find bad faith after looking at the content of proposals. If those "possible circumstances" are confined to the extreme situations where the demands can be said to be insulting, there surely could be no realistic claim of infringement upon school board authority. Of course, if a decision as to bad faith was made on the basis of the philosophy of the dissenter in White, it appears clear that there would be an infringement upon the legislative power of the school board.

The basic test to determine if the techniques required by the dictate of good faith negotiating constitute an infringement upon the legislative authority of the school board is whether the board is required to capitulate or make concessions to demands. It cannot be denied that the ultimate responsibility for a decision must be solely that of the school board. It seems unrealistic, however, to conclude, as suggested by the Supreme Court of Wisconsin,[24] that if good faith bargaining is decreed by statute[25] in the conventional sense in which that term is used in industrial relations, then there is a certain restraint or persuasion, and therefore, an invasion of the board's legislative authority.

It is submitted that if the "rules" of bargaining in good faith do not force the school board to give up its ultimate responsibility for making a decision, there is no infringement on legislative authority just because good faith bargaining dictates that a certain technique of procedure is to be used. It cannot be gainsaid that such rules of procedure do put a certain type of compulsion upon the board which does not exist if the board can "meet and confer" as it pleases. It does, however, seem unrealistic to contend that the imposition of such rules of procedure infringes upon legislative authority, unless the rules cause the school board to capitulate to demands.

This article has already cautioned about the danger of infringement upon the legislative authority of the school board if a state labor relations board or state court should arrive at erroneous conclusions as to the necessity of making concessions, offering counterproposals or looking into the reasonableness of negotiated terms. It is now necessary to set forth other negotiating techniques which the NLRB and the federal courts have stated are dictated by the concept of good faith bargaining so that it might be determined whether these techniques require the school board to surrender its ultimate decision-making power and thus infringe upon the board's legislative authority.

An employer cannot come to the bargaining table and assume the position that he will listen attentively to all proposals, and if he hears anything to which he can agree, he will so indicate.[26] Furthermore, a party cannot enter negotiations with the announcement: "We don't want to waste time, so we will tell you in advance that we will never sign any contract which does not contain the terms which we will now name."[27] For instance, if this rule were applied to a school board bargaining technique, the board could not open negotiations with a proposal that the contract must contain a clause giving sole control over class load and size of the board. The technique is not good faith bargaining, since it constitutes a "take it or leave it" approach.[28] It indicates to the other party that it cannot have any agreement unless it consents to the inclusion of a significant term in the contract about which the proposer will not bargain. The United States Supreme Court has pointed out that parties must evidence a willingness to agree.[29] The "take it or leave it" approach does not harmonize with such philosophy.

On the other hand, if an employee representative demanded a binding arbitration clause and the school board responded that "we will tell you now that we will reserve sole control over class load and size," such a response would not seem to constitute a violation of the concept of good faith negotiations. Firmness on one or more issues when the whole record reveals no intent to dodge the obligation to bargain in good faith is no violation of the requirement.

It is possible that employment relations boards or courts could apply the prohibition against a "take it or leave it" technique to a situation in such a way as to suggest that some counterproposal in the form of a concession is necessary. The philosophy of the General Electric[31] case, decided by the NLRB, may illustrate such an application. In that case the union presented its demands. The company asked for time to study them. After a reasonable time for study, the company returned to negotiations. It announced that it had a policy of continuing year-round research and always did the best it could for employees. It then stated its counterproposal and announced it would not depart from this proposal unless the union could demonstrate that the company had made an error or that there had been some intervening change in circumstances. The NLRB saw in this an approach akin to a "take it or leave it" attitude and seemed to sound a warning of violation of good faith if at an early stage in negotiations a party finalizes a wide range of counterproposals.[32]

There is no doubt whatever than an employer can in due course, after good faith bargaining, put forth a final offer and carry it through to an impasse.[33] Parties do not have to engage in fruitless marathon sessions at the expense of a frank statement and support of position.[34] The unilateral granting of a benefit before an impasse is a circumvention of the duty to bargain and held to be as bad as a flat refusal.[35]

If an impasse does develop, certain acts have been held to violate the dictates of good faith negotiating. Unilateral action on the part of an employer may violate the concept. If an employer grants benefits that have never been discussed at the bargaining table, this constitutes a violation of the good faith requirement.[36] A number of decisions have found no violation after an impasse, however, if the employer granted something which had been discussed during negotiations and which the employer at such time had indicated he would grant.[37] The courts recognized that such action would not seriously discourage membership in employee organizations. Many unilateral actions are condemned as evidencing bad faith in negotiations because they tend to convey to employees that the employee organization did not play a major role in securing a benefit from the employer. If an impasse is broken by a party submitting a realistically new proposal, there is a duty to resume negotiations.

When a contract is finally negotiated, the duty to bargain on modification of terms is suspended until a reasonable time before termination or until a re-opening date if the contract contains such date.[38] A negotiated contract is likely to spell out procedure for handling grievances that arise under its terms. The last step in such procedure may call for final decision by an impartial arbitrator.

An effort may be made by one of the parties during the term of the contract to add to the agreement instead of modifying or changing terms. The concept of good faith in bargaining does not require negotiations in such a situation if the matter which the party wishes to add was discussed at the time of contract negotiations.[39] Negotiations, however, are decreed by the concept of good faith bargaining if a party wishes to add to the agreement during its life a provision which falls within the mandatory subject matter area and was never discussed at the time of negotiating the agreement.[40] It is possible for the parties to use clear language in a negotiated agreement so as to avoid any need to bargain on adding terms during the span of an existing contract. Industry refers to this kind of provision as "zipper clause". The following is an example of such a clause: the employer and the association, for the life of this agreement, each voluntarily and unqualifiedly waives the rights, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed the agreement.

Good faith bargaining demands a realistic interchange of reasons, information and data. Parties are not expected to bargain in the dark.[41]

It is submitted now that none of these techniques of good faith bargaining, with one possible exception, are of the sort that infringe upon the ultimate authority of the school board. The prescribed procedures do put a certain type of compulsion upon the board, but not to the extent of infringing upon legislative authority. The one possible exception can be found in the NLRB's condemnation of the General Electric[42] approach as a "take it or leave it" attitude. In this respect it should be remembered that General Electric was entirely willing to give reasons for the positions it took in its proposal.

It was suggested in a previous paragraph that a negotiated contract might provide a procedure for settling grievances which culminates in binding arbitration. The issue as to whether binding arbitration for such purpose constituted an infringement upon the legislative authority of a minicipality was faced directly by the Wisconsin Supreme Court.[43] The court stated emphatically that there was no infringement. It pointed out that in all its arguments the city made the mistake of assuming that arbitration to dictate the terms of a collective bargaining agreement was involved. The court stressed that a provision to arbitrate disputes that arise under the terms of a contract which the parties have voluntarily negotiated is something entirely different. The court took cognizance of the fact that both parties may desire to provide for arbitration rather than to be forced to litigate through the judicial system.

Attention now needs to be given to a few remaining matters. Early in this article it was indicated that discussion would center on a statute which would provide for "good faith negotiating on wages, hours and other conditions of employment". Since the term "conditions of employment" is broad, the NLRB and the federal courts have focused on the issue as to what subjects fall within the term so that it can be said that bargaining about them is mandatory. The landmark case in the area is NLRB v. Wooster Division of Borg-Warner Corporation,[44] decided by the United States Supreme Court. The Court divided the subjects into those which are illegal and cannot be bargained about, those who are voluntary and can be bargained about, and those which are mandatory and must be bargained about.

The concept that it is illegal to bargain about some subject matter is very important in the area of public employment. This idea recognizes that bargaining often collides with existing statutes and cannot disregard them. Even when this collision takes place, however, there may be considerable opportunity for intermediate negotiations. For example, a state statute may specify the reasons for dismissal of a tenure teacher. Although bargaining could not be used to change those reasons, it could be used to set up some intermediate grievance procedure if the state statute did not prohibit such bargaining.

In the industrial field the trend of court decisions has been constantly to expand the area of mandatory negotiations. It is still recognized, however, that there are some fundamental management rights which need not be negotiated. Justice Stewart in his concurring opinion in Fibreboard Paper Products Corporation v. NLRB,[45] in which the Supreme Court best explains why it supports the legality of collective bargaining, takes special pains to set forth some examples. One illustration is the right to determine the scope of the business enterprise. Stewart admits that decisions in this field would have some relationship to conditions of employment, but he asserts that they lie at the "core of entrepreneurial control", and therefore, the employer does not have to bargain about them.

Similar decisions will be made in the field of public employer-employee bargaining. It can be expected that many state courts will follow the trend of the federal courts in working with fact situations in the industrial field and bring more and more subjects within the area of mandatory negotiations. The struggle will be in the area of the right of teachers to bargain for a role in the hiring, promoting and transfer process. Another field for debate will be the right to bargain about choice of textbooks, curriculum and other aspects of the instructional program. Since teachers are trained professionals, it is entirely probable that administrative boards and courts can be influenced to feel that decisions relative to the instructional program should be treated as falling within a concept such as "conditions of employment". Indeed, a similar argument may succeed in respect to permitting teachers to bargain for a role in connection with hiring and promotion. Since the question of "board right" is likely to be somewhat uncertain, it is predictable that some states will specify the right by statute in a more specific way than the mere use of the general direction that negotiations are to be on "wages, hours and other terms and conditions of employment".

Even if the employment relations boards and the courts become very liberal in defining the mandatory subjects for bargaining, it does not seem logical to assert that this would infringe upon the legislative authority of the school board. The direction will be only to bargain, and as previously indicated, the school board will not be forced to capitulate to demands.

When statutes decree good faith bargaining in the public employment sector, they usually provide for mediation and factfinding if an impasse is reached. They also order factfinding if an administrative board finds a refusal to bargain in good faith. It cannot be said that provisions for mediation and factfinding infringe upon school board authority. Neither the mediator nor the factfinder is given power to order the board to write terms into a contract. The type of factfinding provision found in statutes calls for only an advisory opinion.

Conclusion

The assumption has been that state employment relations boards and courts will not require any more by way of good faith professional negotiation on wages, hours and conditions of employment than have the National Labor Relations Board, the federal courts and the United States Supreme Court in interpreting the requirement for good faith bargaining under the Labor Management Relations Act. If this is so and if state agencies and courts are not misled to believe that the concept of good faith in negotiations dictates concessions, counterproposals to every demand, and a review of the reasonableness of negotiated terms, it is submitted that statutes ordering school boards to negotiate in good faith on wages, hours and conditions of employment do not infringe upon school board authority and, therefore, should withstand any constitutional test.

The trend is running in favor of giving public employees statutory protection for the right to negotiate in good faith. School boards ought to be sufficiently enlightened to see that it would be unwise to try to block the progress of legislation by asserting an invasion of their authority. A statute couched in the terms indicated will not take away from school boards the ultimate power to make decisions. The boards can well afford to remember the philosophy of the United States Supreme Court relative to the merit of collective bargaining: although it is not possible to say whether a satisfactory solution could be reached, national labor policy is founded upon congressional determination that the chances are good enough to warrant subjecting issues to the process of collective negotiations.[46]

Were school boards to understand that bargaining does not require capitulation but is calculated to bring about harmony and build morale, they would seldom reject a proposed subject on the ground that it is not within the mandatory area of bargaining.

It may be said that good faith collective negotiations require recognition by both parties, not merely formal but real, that bargaining is a shared process in which each party has a right to play an active role. Each party balances what is desired against known costs of unresolved disagreement. These costs on the one side may be such things as loss of competent employees and the fostering of a general low morale, and on the other side the loss of community support if unreasonable demands are made. There is nothing inherent in the technique of good faith collective negotiations which mitigates against producing a climate that will insure better education for children.

In conclusion, it seems appropriate to point out that if statutes require good faith collective negotiations, they also must contain realistic enforcement provisions which can be employed against a party showing bad faith. A discussion of appropriate provisions is beyond the scope of this article.

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[1] Perez v. Board of Police Comm'rs, 78 Cal. App. 2d 638, 178 P.2d 537 (1947); People *ex rel.* Fursman v. City of Chicago, 278 Ill. 318, 116 N.E. 158 (1917); King v. Priest, 357 Mo. 68, 206 S.W.2d 547 (1947).

[2] ALA. CODE tit. 55, §§ 317(1)-(4) (Supp. 1957); GA. CODE ANN. §§ 54-909, 54-9923 (1961); N.C. GEN. STATE. §§ 95-97 to 95-100 (Supp. 1959): VA. CODE ANN. §§ 40.65 to 40.67 (1950).

[3] Educators would prefer to have a statute use the term "professional negotiations". If instead the term used is "collective bargaining" or just "negotiations", the legislation is using synonymous terms. The insertion of the word "professional" does not legally dictate any different approach to negotiations or bargaining. If the representatives are men of integrity, it will not direct any different ethical approach.

[4] Such was the interpretation of WIS. STAT. § 111.70 (1961) (which uses the words "conferences and negotiations") by the 2 to 1 majority of the Wisconsin Employment Relations Board in Moew v. City of New Berlin, Case IV, Doc. #7293 (1966).

[5] 37 Wis. 2d 483, 155 N.W.2d 78 (1967).

[6] The California statute presents an example of a proportional representation scheme. CAL. GOV'T CODE § 3501 (1966), *as amended*, (Supp. 1968) and CAL. EDUC. CODE §§ 13080-88 (Supp. 1968).

[7] National Labor Relations Act § 8(d), 29 U.S.C. § 158(d) (1964).

[8] *Id.*

[9] 301 U.S. 1, 45 (1937) (emphasis added).

[10] Globe Cotton Mills v. NLRB. 103 F.2d 91, 94 (4th Cir.1939).

[11] NLRB v. George P. Pilling & Son Co., 119 F. 2d 32.37 (3d Cir. 1941) (emphasis added).

[12] NLRB v. Montgomery Ward & Co., 133 F.2d 676 (9th Cir. 1943).

[13] Paul Herzog at *Hearings on S. 55 and S.J. Res. 22, Before the Senate Committee on Labor and Public Welfare*, 80th Cong. 1st Sess. 1886 (1947).

[14] National Labor Relations Act § 8(d), 29 U.S.C. § 158(d) (1964).

[15] 89 N.L.R.B. 503 (1950).

[16] The Third Circuit read the facts differently and felt that counterproposals had been made. NLRB v. Landis Tool Co., 193 F.2d 279 (3d Cir. 1952).

[17] Highland Park Mfg. Co., 12 N.L.R.B. 1238 (1939), *enforced*, 110 F.2d 632 (4th Cir. 1940).

[18] Fibreboard Paper Prods. Corp. v. NLRB, 379 U.S. 203, 214 (1964).

[19] *See* Capital Aviation, Inc., 152 N.L.R.B. 745 (1965); Dierks Forests, Inc., 148 N.L.R.B. 923 (1964).

[20] 255 F.2d 564, 566 (5th Cir. 1958).

[21] NLRB v. American Nat'l Ins. Co., 343 U.S. 395, 408-09 (1952).

[22] 255 F.2d at 569.

[23] *Id*.

[24] Joint School Dist. No. 8 v. Wisconsin Employment Relations Bd., 37 Wis. 2d 483, 494, 155 N.W.2d 78, 83 (1967).

[25] Instead of the "conferences and negotiations" requirement of § 111.70 of the Wisconsin statute.

[26] NLRB v. Montgomery Ward & Co., 133 F. 2d 676 (9th Cir. 1943).

[27] NLRB v. American Nat'l Ins. Co., 343 U.S. 395 (1952).

[28] In the early case of Highland Mfg. Co., 12 N.L.R.B. 1238 (1939), *enforced*, 110 F.2d 632 (4th Cir. 1940), collective bargaining was interpreted to include an obligation to enter into discussion or negotiations with an open and fair mind and with a sincere purpose to find a basis for agreement concerning issues raised.

[29] NLRB v. Insurance Agents Union, 361 U.S. 477 (1960).

[30] NLRB v. American Nat'l Ins. Co., 343 U.S. 395 (1952).

[31] 150 N.L.R.B. 192 (1964).

[32] There were other things that General Electric did which would make it possible to explain the outcome on the basis of totality of conduct adding up to bad faith in negotiations. However, board member Jenkins, in a concurring opinion, stated flatly that he felt the NLRB would have condemned the counterapproach as an indication of bad faith in negotiations even if other elements had not been involved in the case. The case was appealed, but no decision has been rendered because of involvement in certain procedural difficulties.

[33] Philip Carey Mfg. Co. v. NLRB, 331 F.2d 720 (6th Cir. 1964).

[34] NLRB v. American Nat'l Ins. Co., 343 U.S. 395 (1952).

[35] NLRB v. Katz, 369 U.S. 736 (1962).

[36] NLRB v. Crompton-Highland Mills, Inc., 337 U.S. 217 (1949).

[37] NLRB v. United States Sonics Corp., 312 F.2d 610 (1st Cir. 1963); NLRB v. Intracoastal Terminal, Inc. 286 F.2d 954 (5th Cir. 1961); Pacific Gamble Robinson Co. v. NLRB, 186 F. 2d 106 (6th Cir. 1950).

[38] National Labor Relations Act § 8(d), 29 U.S.C. § 158(d) (1964), prescribes rules in respect to negotiations prior to efforts to modify or terminate an existing contract. A state statute could very wisely do so in the field of public employment.

[39] NLRB v. Union Carbide & Carbon Corp., 100 N.L.R.B. 689 (1952).

[40] NLRB v. Jacobs Mfg. Co., 94 N.L.R.B. 1214 (1951), *enforced*, 196 F.2d 680 (2d Cir. 1952).

[41] For an expression of this philosophy, see Truitt Mfg. Co., 110 N.L.R.B. 856 (1954), *enforcement denied*, 224 F.2d 869 (4th Cir. 1955), *rev'd*, 351 U.S. 149 (1956).

[42] 150 N.L.R.B. 192 (1964).

[43] Local 1226, Rhinelander City Employees v. City of Rhinelander, 35 Wis. 2d 209, 151 N.W.2d 30 (1967).

[44] 356 U.S. 342 (1958).

[45] 379 U.S. 203 (1964).

[46] *Id*.

6

The Agency Shop

This chapter was prepared by Educational Service Bureau staff editors with the assistance of the National Right To Work Committee.

The National Right to Work Committee is a coalition of thousands of employees, both union and non-union, as well as business firms, housewives, clergymen and educators, which was organized in 1955 to protect the right of citizens to get and hold jobs, whether they belong to labor unions or not.

In public education, the "agency shop" is part of a negotiated agreement that requires teachers to either pay a "service fee"--usually an amount equivalent to monthly dues--to the local teacher organization within a specified period of time, or be fired by the school board.

Here is how the agency shop works in practice: The Livonia (Michigan) Education Association negotiated an agency shop contract with the Livonia School Board in the fall of 1968. Mrs. Ruth E. Williams, a 57-year old elementary school teacher, refused to pay dues to the LEA throughout the 1968-1969 school year. Commenting that Mrs. Williams was a "fine teacher whose professional qualifications were never in question," LEA Executive Secretary Roger Stephon insisted she be fired for refusing to pay forced dues to his organization. The Livonia School Board complied and fired Mrs. Williams this past June.

To date there has been no final court decision which has ruled the agency shop illegal in public education.

School boards face a host of new problems when they grant exclusive recognition rights to a teacher organization.

The organization must then represent all teachers in the district, regardless of whether they are members of the organization or regardless of whether they benefit from the unsolicited representation. The board cannot discriminate against non-members in negotiations or in processing grievances. Any salary increases or improvements in working conditions negotiated by the organization must apply to members and non-members alike.

These organizational obligations to represent all members of the negotiating unit raise several important questions concerning the relationship between the individual teacher and the representative organization.

What obligations, if any, does the individual teacher have to the organization designated exclusive representative? Should the teacher be required to join the organization? Should the teacher be required to pay "service fees" to it under the agency shop plan? These questions, which underlie the Right to Work controversy in private employment, are rapidly becoming controversial issues in public education.

Forms of "Organizational Security"

Unions in the private sector have developed the following forms of "union security" provisions in their contracts:

Closed Shop--	Employees must join the union before they can begin working for the company (made illegal by the 1947 Taft-Hartley Act.)
Union Shop--	Employees must join the union within a specified period of time after being hired. Period is usually 30 days, although 7 days is more prevalent in the construction industry.
Agency Shop--	Employees are not required to join the union, but they are forced to pay a "service fee" that is usually equal to dues and initiation fee.
Maintenance of Membership--	Employees are not required to join the union, but if they join they must maintain membership for the life of the contract.

School administrators are facing more and more demands for some form of organizational security in negotiations with teacher organizations. Organizational needs often require some financial support from nonmembers if the latter are to be effectively represented. Salaries for full time union professionals, office and overhead expenses, publications, advertisements, and attorney and consultant fees often place great strains on the budget of the teacher organization.

Furthermore, some union officials complain, the organization's duty to represent everyone fairly creates an incentive for teachers to not join the organization, because nonmembers are guaranteed the same benefits as members.

On the other hand, existing federal law in the private sector grants to a certified labor union the privilege of representing all employees in a company's bargaining unit--including union members and non-union members. Although as many as 49% of the affected workers may have opposed certification of the union, they are required by law to accept it as their legal bargaining representative. This privilege accorded unions by the 1935 Wagner Act is called "exclusive bargaining rights".

It was described as an "extraordinary privilege" by a three-judge district court, whose opinion was subsequently affirmed by the U.S. Supreme Court (National Maritime Union of America v. Herzog, 334 U.S. 854, 1948).

It was union officials who insisted that Congress grant them this "extraordinary privilege". But today union spokesmen complain they are unjustly "burdened" by the "legal obligation" to represent non-union workers.

How do union officials propose to remedy this problem of their own creation? They are not advocating a law that would authorize unions to be bargaining representatives for union members only. Rather, they are demanding authority to collect money--by compulsion--from employees who do not wish to be represented by the union.

A unique approach to this problem was taken by the state of Vermont in April 1969, when the legislature enacted a statute authorizing collective bargaining for state employees. While shielding state employees from all forms of forced unionism, including the agency shop, the law requires that an employee in the bargaining unit who has elected to refrain from joining the union and who wishes to be represented by the union in a grievance proceeding, can do so only upon the payment of a fee equal to one year's membership dues.

The solution advanced by some local and state NEA affiliates is to support legislation authorizing local organizations to negotiate an agency shop contract requiring teachers to pay dues to the organization or be fired. This is especially true now that the NEA has endorsed the agency shop in its recently proposed federal law mandating collective bargaining in public education.

Says the law, "It is . . . the policy of the United States to recognize the rights of professional employees of such boards of education to form, join and/or assist employee organizations . . . " In the absence of any language protecting the right of teachers not to "form, join and assist" employee organizations, the term "assist" is universally construed to mean the agency shop would be both legal and negotiable.

The Michigan Education Association, specifically, has urged its local affiliates to negotiate agency shop clauses. Other state associations are likely to follow suit in the near future.

On the other hand, AFT affiliates may be less likely to introduce agency shop provisions into negotiations. Nationally, the AFT is reluctant to urge its local affiliates to adopt the agency shop. The reason for this reluctance is that a local organization would probably solidify its position as exclusive representative if it won an agency shop.

On this basis, the AFT nationally would have more to lose than the NEA, since many more NEA local associations are serving as exclusive representatives than are AFT affiliates. It is likely, however, that some local AFT leaders, confronted by relatively low membership in school districts where the AFT locals are obligated to represent large numbers of nonmembers, will deviate from national policy.

School administrators will undoubtedly be faced with organizational security demands from noncertificated employees as well. The Wilmington, Delaware, Board of Education (among others) has agreed to an agency shop for a group of bus drivers and custodians. It seems obvious, therefore, that school administrators will have to be prepared to adopt a consistent position on this issue.

Analysis Needed

School administrators should carefully analyze the disadvantages of the agency shop before formulating a definite position on this issue. An agency shop causes many changes in a typical negotiating relationship. It has implications that go far beyond the current round of negotiations; hence long-range considerations must be weighed carefully.

The legality of various forms of organizational security is one of the first problems to be considered. Two courts have issued contradictory opinions on the legality of related forms of organizational security in public education. (See: Benson et al. v. School District No. 1 of Silverbow County et al., 344 P. (2d) 117 Montana 1959 and Magenheim v. Board of Education of District of Riverview Gardens, 347 S. W. (92nd) Missouri, 1961.)

No court, however, has ruled specifically on the legality of the agency shop in education. As a result, boards of education and teacher organizations will continue to negotiate agency shop clauses. A lawsuit will be almost guaranteed if there is an opposing teacher organization in the school district. Even if there is no rival organization to raise the issue of legality,an individual teacher may do so. Such a case now exists in Detroit, Michigan. It is impossible to predict accurately the outcome of such a case.

The agency shop is usually a high priority goal for the teacher organization. This might appear to place the school administrator in an advantageous negotiating position. He might be tempted to use the agency shop to obtain some important concessions in negotiations.

Even though the agency shop may be an important goal for the teacher organization,the organization may have difficulty obtaining membership support for it. In the short run, the agency shop benefits the organization more than its members. Also, it is much easier to obtain public support for salary increases and reductions in class size than for an organizational security clause. For these reasons, the organization is not likely to publicize its demand for an agency shop.

Organizational Pitfalls

It is possible for an agency shop to backfire on organizational leaders. Once a teacher is required to support an organization, he may become more interested in its activities. This could result in increased pressures on the leaders and give rise to rival candidates for elected positions in the organization.

Do teachers always benefit from being represented by a union? The experience of states which now permit compulsory unionism makes it clear that some teachers are helped, others are hurt by union representation.

The teacher who pays the dues, some say, is the only person qualified to decide whether or not a union is worthy of his support. The teacher's freedom to choose would be stripped from him by the agency shop and would become the subject of bargaining between the school board and a union official, both of whom will naturally be tempted to put their own personal interests ahead of that of the employee.

If the agency shop were adopted, teachers could be required to pay money to a union, even though they know its salaries officials might be:

1. Dishonest, corrupt, lazy or incompetent;

2. Pursuing policies which would hurt the schools and destroy job security;

3. Making "sweetheart" deals with unscrupulous or weak-kneed school boards and administrators; or

4. Spending union money to elect politicians who are more interested in increasing the power of union officials than in the welfare of the school system.

An "agency shop" agreement negotiated by officials of a teachers organization can easily become a deal in which the incumbent office-holders obtain union campaign support in exchange for requiring all employees to pay dues to union treasuries.

Former assistant counsel for the United Auto Workers Kurt L. Hanslowe, now a Cornell faculty member, has observed: ". . . the union shop in public employment has the potential of becoming a neat mutual back-scratching mechanism, whereby public employee representatives and politicians each reinforce the others' interest and domain, with the individual public employee and the individual citizen left to look on, while his employment conditions and his tax rate and public policies generally are being decided by entrenched and mutually supportive government officials and collective bargaining representatives over whom the public has diminishing control."

Professor Hanslowe's observations might also be applied to the agency shop. Said the Florida's Supreme Court (Schermerhorn v. Retail Clerks,): ". . . the agency shop clause is repugnant to the Constitution in that it requires the non-union employee to purchase from the labor union a right which the Constitution has given him. The Constitution grants a free choice in the matter of belonging to a labor union. The agency shop clause . . . purports to acknowledge that right, but, in fact, abrogates it by requiring the non-union worker to pay the union for the exercise of that right or, in the alternative, to be discharged from his employment."

Political Setting

There exists the opportunity for union resources in enormous amounts--made up mostly of forced dues netted by compulsory union shop and agency shop agreements--to be used to influence the political judgments of the membership.

The official magazine of the AFL-CIO, The Federationist, reported on decisions made at that group's convention in December 1967 with these words: "The convention called for top priority for political action . . . all unions were urged to assign as many full-time staff members as possible for full-time political education work as early as possible in 1968."

As Joseph Rauh, then attorney for the UAW, told the U. S. Supreme Court in 1956: "When a union member pays his dues, he has paid for his political action."

According to authoritative reports, the AFL-CIO last year spent more than sixty million dollars on the campaign of a presidential candidate who ultimately received the vote of only 56% of union families. Add to that the campaigns for public officials at every level, and union political spending last year probably totaled 200 to 300 million dollars.

But the fact that the Presidential candidate who was backed by union money was opposed by some 44% of union families is really not the issue. The issue is the agency shop: Are workers compelled, as a condition of employment, to pay money to a union which uses it for candidates to whom that worker is opposed?

In the area of politics, certain fundamental civil rights are generally held inviolable,no matter how small the minority involved. As the U. S. Supreme Court said in Barnette v. West Virginia Board of Education, "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election."

The situation of the captive teacher being forced to pay compulsory agency fees is precisely the situation described by Thomas Jefferson when he said, "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical."

Justice Hugo Black, in 1961, commented on the same principle in a contemporary setting. He wrote: "There can be no doubt that the federally-sanctioned union shop contract here, as it actually works, takes a part of the earnings of some men and turns it over to others, who spend a substantial part of the funds so received in efforts to thwart the political, economic and ideological hopes of those whose money has been forced from them under authority of law. This injects federal compulsion into the political and ideological processes, a result which I have supposed everyone would agree the First Amendment was particularly intended to prevent. And it makes no difference if, as is urged, political and legislative activities are helpful adjuncts of collective bargaining. Doubtless employers could make the same arguments in favor of compulsory contributions to an association of employers for use in political and economic programs calculated to help collective bargaining on their side. But the argument is equally unappealing whoever makes it. The stark fact is that this Act of Congress is being used as a means to extract money from these employees to help get votes to win elections for parties and candidates and to support doctrine they are against."

Action in Michigan

The main thrust of the drive to establish agency shop contracts is centered in Michigan. The state law governing collective bargaining in the public sector--and therefore public education--is silent on the permissibility of negotiating the agency shop. A number of states, (most recently, Wisconsin), however, have excluded reference to the agency shop in proposed legislation.

The silence is being interpreted by teacher association/union leaders as permitting the agency shop, an interpretation that has been bolstered by a number of favorable fact-finding reports in the state. Consequently, a number of school boards have agreed to permit their teachers to pay agency fees to associations/unions. Although the exact number of agency shop agreements in public education is not known at this time, the editors estimate the number to be at least a dozen.

This trend in Michigan will probably be accelerated by the recent ruling of the Michigan State Tenure Commission, of the Michigan State Board of Education, which stated that the agency shop is not contrary to the state's tenure law. The agency shop issue has yet to reach the state's supreme court--but it inevitably will, as court challenges are already under way.

There are strong forces in every state which oppose the agency shop. Michigan is no exception. In considering the agency shop matter, that state's powerful Michigan Municipal League has taken this position:

"The League membership is opposed to any change in our law which would compel nonunion members, at the risk of losing their jobs, to join a union or to pay union dues. Such a requirement would force thousands of public employees who have freely elected not to join unions, to pay union dues. We do not believe such a requirement is necessary or desirable."

Future Uncertain

In the fall of 1969 the Advisory Committee on Intergovernmental Relationships released a report encouraging all states to adopt collective bargaining laws for public employees. This committee recommended as a part of its report that agency shops be prohibited. What impact this report will have on the future of the agency shop remains to be seen.

Part II

7

Advisory Commission's Conclusions On Labor Relations

The long-awaited blue ribbon report on labor relations in government by the Advisory Commission on Intergovernmental Relations has now been released. Undoubtedly, the Commission's report will have great impact upon the future of collective bargaining for public employees, including teachers, at all levels of government.

Following are the Commission's major findings, conclusions, and recommendations.

In this report, the factors responsible for the mushrooming of public employee organizations have been highlighted, the provisions of state labor-management relations legislation for the public sector examined, the current status of public employer-employee relations at the local level explored, and the major policy problems and issues raised by these and related developments analyzed in depth. The Commission now sets forth its major findings and conclusions, as well as proposals for placing labor-management relations in state and local employment on a stable, equitable, and workable basis.

Summary of Major Findings

- Government today, especially at the state and local levels where there are more than nine million employees, has become a prime source of employment in the United States. The growth in membership of public employee organizations, however, has not kept pace with the rapid rise in governmental hiring, although it has far outdistanced the rates of other sectors of the labor market, climbing from just over five percent of the aggregate union membership in 1955 to nearly 10 percent of the current total.

- In 1966, nearly eight percent (644,000) of all state and local employees were members of various AFL-CIO affiliates and of independent state and local employee associations. When the relevant figures for the National Education Association, American Nurses Association, Fraternal Order of Police, and Assembly of Government Employees are combined with those for the unionized sector, the overall "organized" portion of the state and local public service comprises at least one quarter of the total. Yet, this sector clearly is not monolithically organized; cleavages, competition, and conflicting goals are as characteristic of the relations among public employee organizations as are cooperation and collaboration.

- Survey results indicate that most municipalities have some type of public employee organization, and nearly all of those over 500,000 population, in the northest and north-central regions, classed as central cities, and having a mayor-council form of government, have at least three unions. On the other hand, the fastest organizational growth rate in recent years has occurred in southern, suburban, non-SMSA, as well as council-manager municipalities - most of which not long ago were generally considered as being hostile or indifferent to unions or other employee organizations. More than one-half of the urban counties surveyed had at least two public employee organizations, with jurisdictions over 250,000 and those located in the western region showing the most significant strength.

- National union affiliates alone were found in about half of the municipalities surveyed and especially in large jurisdictions, suburbs, and non-SMSA cities. Local associations only predominate in the west and generally in those organized municipalities below 100,000. A mixture of nationals and locals was reported by approximately one-third of the total and most frequently by northeastern central cities. The ACIR-NACO survey shows counties over 250,000 in the west with a strong tendency to have both national affiliates and local associations. Local associations exclusively are most common in counties with a population between 25,000 and 50,000 and in those in the northeast regardless of size, while nationals alone predominate in the south.

- In terms of the extent of membership, nearly half of all cities surveyed indicated less than 25 percent of their work force belonged to employee organizations. Nearly three-fourths of the public labor force of municipalities over 100,000 is organized as against only one-fourth of that of cities under 25,000. Fire, police, and public welfare personnel are the most heavily organized local occupational groups.

- In 33 states, the right of state and local employees to organize has been sanctioned by statute, court decision, attorneys general opinion, or executive order; in two others the right is accorded to state personnel only and in three others to local employees solely. Fourteen of these states during the past decade have enacted comprehensive labor-management relations legislation which mandates collective negotiations for state employees, local personnel, or both. Two other states have passed laws permitting management to negotiate collectively with public employee representatives. Five states have enacted statutes requiring public employers to "meet and confer" with individual employees or with employee organizations. States have exhibited a somewhat greater willingness to authorize collective negotiations at the local level than for their own employees. Twelve states provide no general administrative or statutory authorization for the right to organize, but three recent lower federal court decisions have held that belonging to a public employee organization is a constitutionally protected right and cannot serve as a basis for dismissal or other forms of punishment.

- Nearly two-thirds of the municipalities and more than one-half of the counties surveyed have no laws for formal policies dealing with the right of general or public safety personnel to organize; with punishment for their organizational activities; with arbitration of employer-employee disputes; or with management's power to sign negotiated agreements. In some instances, state legislation covering one or more of these areas may explain the lack of local laws or formal policies. Moreover, in certain states and localities where collective negotiations have not been either explicitly authorized or prohibited, de facto negotiations have taken place in order to keep public employer-employee relations on an even keel.

- While no state permits strikes by public employees, 254 "work stoppages" occurred in 1968 - 17 times the 1958 figure. Between 1966 and 1968, the number of strikes involving government employees almost doubled. Teachers were engaged in more stoppages than any other public sector occupational category. Gut economic or professional issues were the prime causes of strikes, but union recognition and security were the second most significant reasons. The concept of a "limited right to strike" is now being debated in some quarters as evidenced by its endorsement in two recent state study commission reports, its support by certain "experts" in the field, and its incorporation in legislation now pending before at least one legislature. At the same time, a recent Gallup poll indicated that nearly two-thirds of the general public continues to favor anti-strike provisions and safeguards, but sanctions the right of public employees - including teachers, policemen, and firemen - to belong to unions.

- With reference to the content of comprehensive public labor-management relations laws, wide diversity exists as to whether and where the "meet and confer" or "collective negotiations" approach is used and whether the preferred approach is permitted or mandated. Diversity also characterizes the kind of administrative agency assigned responsibilities under the act (other than a preference to use an existing instrumentality); the extent of the authority conferred explicitly or implicitly upon the agency to handle grievances and to settle disputes; the definition of unfair labor practices (other than a simple noninterference provision and the requirement to bargain, negotiate, or meet and confer "in good faith"); the types of matters amenable to negotiations or discussions; and efforts to gear collective negotiations with budgeting timetables. Some uniformity, however, emerges in the right to union membership, strike prohibitions, hearing procedures on charges of unfair practices, and the absence of provisions for union security such as the agency shop. In general, it is still too early to assess accurately the merits and drawbacks of the various provisions of comprehensive state public labor relations laws. Superficial evidence would suggest that jurisdictions having such legislation experience as much - if not more - employee turmoil as those having none. At the same time, some data exist to document the hunch that a considerable number of impasses have been resolved and stoppages averted as a result of the availability of statutory dispute settlement procedures.

- Nearly two-thirds of the states have mandated some terms and conditions of local public employment, with working conditions and fringe benefits the most prominent type for both cities and counties followed by hours of work. City and county public safety personnel are the most common occupational focal point of these requirements. Only a handful of states have provided any fiscal support when mandated conditions have caused a hike in local personnel outlays.

- Thus far, federal mandating of personnel standards for state and local governments has taken two forms: requiring, under 30 grant programs, the establishment of personnel systems based on the merit principle by administering state and local agencies as a condition of receipt of federal funds; and extending the Fair Labor Standards Act to cover certain state and local hospitals and educational personnel. In the case of the former, federal funds from these grant programs have been used to help cover the cost of administering merit system requirements. Moreover, training funds in certain functional areas have indirectly assisted states in meeting mandated requirements. Extension of the Fair Labor Standards Act to certain categories of state and local education and hospital personnel was upheld in 1967 by the Supreme Court in Maryland v. Wirtz. While most states are in various stages of compliance with this decision, certain observers detect a feeling among some state and local officials that this precedent may well serve as the basis for later federal "encroachments."

The Commission now sets forth 16 recommendations for intergovernmental action to improve employer-employee relations at the state and local levels. These recommendations fall under three major headings:

A. The Rights and Privileges of Public Employees

B. The Essentials of Proper Public Employer - Employee Relations

C. State and Federal Mandating of Employment Conditions

The Commission does not purport to have any final or ideal answers in this turbulent area of public policy. What the Commission has done is to render some collective judgments (not all of them unanimous) as to what appears to be the most desirable directions in which to move. It has set forth in this report as clearly and as fully as possible the alternative courses of action facing state and local legislative bodies and the reasons for the preferences at which the Commission finally arrived.

Rights and Privileges

A major factor leading to uncertainty and, in some instances, to unrest in public labor-management relations is the failure to define the scope of basic rights and privileges of public employees, to clarify the position of supervisory personnel, and to assure a responsive and responsible relationship between the membership and leadership of public employee associations and unions. The Commission is convinced that these basic questions involving the freedoms of the individual worker and of employee organizations, as well as the necessary limits on these freedoms, should be treated in state legislation and should not be left to administrative or judicial determination or to the exigencies of a meet and confer or bargaining process. The time has long since passed when the argument could be made that public employees have no rights - yet, the tenor of the times clearly indicates that an irrefutable case can not be made that the rights and privileges of public personnel are, in all major respects, comparable to and as comprehensive as those of their counterparts in the private sector. A balance then must be struck between the legitimate needs and undeniable rights of the employees on the one hand, and the public service responsibilities and political accountability of the governmental employer, on the other. The recommendations advanced in this and subsequent sections seek to strike this balance.

Recommendation No. 1
Membership and Representation

The Commission recommends that the states enact legislation requiring local governments and agencies of the state to recognize the right of their employees freely to join or not to join and be represented by an employee organization.

Sharp increases in the number and types of public employee unions and associations and in the willingness of such organizations to resort to aggressive tactics to secure their objectives have caught many state and local governments by surprise. For the most part, however, the demands now being made by public employees merely echo those voiced in the 1930's by private industry's labor force. Perhaps the most basic objective is freedom of individual workers to organize and to be represented by an employee organization.

From the viewpoint of government, these demands raise some basic questions. Will not the soverign authority of the people be compromised by recognizing organizational freedoms? Will not greater labor strife be a by-product of such an action? Will not the critical differences between public and private employment be blurred by conceding these rights?

The public employee, on the other hand, views formation of unions and associations in the public service as basically an extension of the citizen's constitutional right to petition his government. Sometimes it is argued that such organizational activity is merely an extension of the constitutional right of free association.

The Commission believes that the same right of employees in the private sector to join unions of their own choosing should be extended to state and local employees by state legislation. While statutory recognition of public employee organizational rights is not always necessary, state legislative policy should be explicit in a matter so vital to the public interest and to peaceful, productive personnel relations. Membership in public employee organizations should be recognized by the states as an extension of the basic constitutional rights of freedom of association and petition.

Old-style opponents of the right to union membership fear that in the absence of statutory safeguards, the political and economic power of employee organizations would be strengthened to the detriment of the public interest, and that large unions and associations would use their numbers along with the strike weapon to win from public management agreement to unjustifiable demands. Others sharing this traditional view contend that, based on the sovereignty doctrine, public employees have no inherent right of unionization. Membership in employee organizations, then, is a privilege that conceivably can be revoked by a legislative body. Some "good government" critics argue that the goals and tactics of employee organizations are incompatible with both the merit principle and the merit system. As a result, full-scale organization of the public service should be opposed. Finally, still other observers believe that since no constitutional right to governmental employment exists, public employers may properly require nonmembership in employee organizations as a condition of employment in order to ensure public services are provided without interruption.

Despite these contrary views, the right of an employee to join a union or association - as distinguished from the right of an organization to be recognized - has been upheld by the U. S. Supreme Court under the First Amendment, made applicable to the states under the Fourteenth Amendment. Although most states previously had not expressly banned membership in public employee organizations or authorized management to punish workers for their organizational activities, a few states either had forbidden such affiliation to some or all public employees or had imposed conditions which made membership unfeasible. The Commission feels that these self-defeating state actions and attitudes do little to engender sound and stable public employer-employee relations at this point in time. Moreover, they run the risk of adverse court action.

While recognition of the right to membership is fundamental, of equal importance is the principle that no public employee should be required or coerced into joining an organization as a condition of employment. At least 14 states recognize that the right to refrain is just as basic and precious as the right to join, and the Commission supports this position.

Some authorities contend that state legislation should not include language that gives employees the option of not joining an employee organization. They point out that the states should not mandate the "choice" provision since it would preclude employer and employee representatives from negotiating union and closed shop agreements. The preferable approach, according to this argument, is for state laws to remain silent on this matter, thereby providing a greater degree of flexibility for public agencies and employee organizations to arrive at agreements tailored to fit their own special circumstances.

The Commission believes these contentions ignore the fact that in the public service the right to join an employee organization must be accompanied by the right not to join. When the right to join becomes a duty, obviously freedom of choice becomes merely a catchword. The Union shop and the closed shop may or may not be appropriate for various craft and trade portions of private industry. But given the size of many governmental jurisdictions and agencies, the diversity of employee skills, and the intense competition between and among public employee organizations, this arrangement is wholly unsuitable in the public service.

The right to refrain from organizational membership, however, is conditioned by handling of the representation question. While this right may be expressed in an employee's vote not be be represented by a union or association, in practical terms when a majority of the employees in an appropriate unit choose an agent to act on their behalf, the individual employee cannot refuse to be represented. While the fundamental right not to join is still preserved, the employee is virtually represented by the majority organization. Under an "agency shop" arrangement, he may be required to pay fees for its "representational services." At the same time, the desirability of individual employees and minority organizations having access to the public employer must be recognized.

The legal right of a public employee to join a union or association is meaningless unless it is coupled with the right of recognition. The fact that recognition is still the second highest cause of strikes in the public service indicates the continuing failure of a considerable sector of management to acknowledge the right of workers to be represented by an organization of their choice. Given the size and specialization of the public labor force, the need today for establishing and sustaining an on-going dialogue between public employees and employers is indisputable. Employer recognition of the representational status of employee organizations is clearly a prime prerequisite for any meaningful discussion process.

In the wake of a 1951 Connecticut court decision, many cities, counties, and school districts proceeded within their discretionary authority to recognize public employee organizations in states where such practices were not expressly authorized or prohibited by statute. Yet, the Commission believes that states should not leave the recognition question to court decisions, attorneys general opinions, or administrative orders. Statutory authorization would resolve any doubts on the part of the public officials concerning the legality of their actions, and would prod recalcitrant officials to recognize organizations representing their employees. Such legislative action also would eliminate a basic cause of strikes in the public sector, and would help inject an element of trust and dignity to what formerly, in many instances, was a suspicious or sparring relationship.

Recommendation No. 2
Exclusion of Supervisory and Certain Other Personnel

The Commission recommends that in order to protect the position of public employers, employee rights and privileges conferred by state public labor relations laws should be denied to: (a) managerial and supervisory personnel who have authority to act or recommend action in the interest of the employer in such matters as hiring, transferring, suspending, laying-off, recalling, promoting, discharging, assigning, rewarding, or disciplining other employees; who have authority to assign; and/or who direct work or who adjust grievances; (b) elected and top management appointive officials; and (c) certain categories of "confidential" employees including those who have responsibility for administering the public labor relations law as a part of their official duties.[1]

Supervisors have traditionally been eligible for membership in public employee associations, even though union membership has been denied to them. The issue of inclusion or exclusion of supervisory personnel is particularly controversial in education, the largest field of local government employment, where the National Education Association and the American Federation of Teachers have taken differing positions. NEA favors supervisory employee membership while the AFT, with but few exceptions, is for exclusion. This problem also involves middle-level supervisors in fields other than teaching, where common professional goals and program objectives closely link with management and employees.

Whether to accord supervisory and other management personnel the rights granted regular public employees is a basic issue that must be decided by policy makers grappling with proposed public labor-management relations legislation. This subject usually is more complicated in the public than in the private sector, due to the probability that the latter's traditional definitions of "management" and "employee" may not be applicable to the more complex personnel systems of many states and localities. Yet, whether to exclude or to include such personnel is a question on which state statutes cannot be silent or vague.

Many supervisors and key professionals - such as teachers, policemen, firemen, and social workers - have a strong community of interest with the rank-and-file workers they supervise. Hence, frequently no conventional distinctions are apparent between management and employee functions.

The sensitive question of the status of supervisory and other key personnel in public employee organizations must be dealt with forthrightly in state public labor-management relations legislation. The Commission believes that while such statutes should not prohibit supervisors and managerial personnel from membership in a union or association, they should not be allowed to hold office in or to be represented by an employee organization to which rank-and-file employees belong. Elected officials, key appointive people, and certain "confidential"[2] employees also should not be accorded these employee rights. Participation of any of these personnel in union or associational activities would sharply limit management's effectiveness at the discussion table.

A persistent and perplexing problem is the failure of many key middle-management and supervisory officials to act like "management," even when their role and public responsibilities clearly put them on that side of the discussion table. A clear legislative denial of employee rights to such personnel will prompt a clarification of this attitudinal confusion.

From the viewpoint of a union or association, certain objections also can be raised concerning participation by supervisors and other middle-managers in their activities. Supervisory personnel cannot remove themselves entirely from an identification with certain management responsibilities, and this can generate intra-union strife. Their involvement in union or associational affairs in effect places management on both sides of the discussion table. State legislation dealing with public labor-management relations, then, should clearly define the types of supervisory and managerial personnel which should not be accorded employee rights.

Some observers contend that states should statutorily accord to supervisory employees the rights to organize and to present proposals to the employer's representative. It is generally conceded, however, that this approach is sound only if supervisors, when exercising such rights, act through an organization entirely independent of any which represents non-supervisory employees. Michigan's Public Employment Relations Act for city, county, and district employees, for example, permits supervisors to form their own bargaining units. Establishment of separate units presumably ensures that supervisors will continue to uphold their responsibilities as representatives of management when dealing with rank-and-file employees.

Another body of opinion holds that no state law can deal comprehensively with the status of all supervisors, given the diversity of public employers and their varying supervisory structures. It is difficult if not impossible, so the argument runs, to deal equitably with this problem by statutory definition. This position is taken in New York State's "Taylor Law," which does not attempt to define "supervisory employee" precisely, but empowers the state public employee relations unit to promulgate this definition by rule or decide it on a case-by-case basis and then apply it to such occupational categories as the agency deems appropriate.

The Commission finds both of these approaches defective. Allowing supervisors to organize and to present proposals perpetuates the vocational ambivalence that this group has long exhibited. The need at the present time is for management to identify its members and to develop a healthy community of interest. This, in the long run, will benefit employees more than any short-term gains which might come from supervisors continuing to act as part-time advocates for the rank-and-file.

Leaving the supervisory status question open for administrative determination will produce widely varying interpretations of organizational rights, and this will do little to engender cohesion within management ranks. Consistency between and among state and local jurisdictions in the definition of the rights of supervisory and managerial personnel can only be realized through legislative action. Experience to date indicates that administrative units have encountered severe difficulties in coping with this question when legislative guidelines are conflicting, uncertain, or non-existent.

The Commission believes, however, that supervisory and managerial personnel should enjoy certain basic organizational rights. They should be permitted to join and to be represented by an organization that does not include rank-and-file employees on its membership roster. They or their representatives should be authorized to meet on an informal basis with their employer's agent for the purpose of consultation in connection with the terms and conditions of employment or on such other matters as may be determined by the agency head. Yet, regardless of their top or middle echelon status, because they are still members of the management team, supervisors or their representatives should not participate in formal discussions, nor should they be parties to memoranda of understanding with the employer.

Recommendation No. 3
Prohibiting Strikes by Public Employees

The Commission recommends that state labor relations laws prohibit all public employees from engaging in strikes. Such laws should mandate the use of specific procedures (e.g., fact-finding, mediation, advisory arbitration) to resolve impasses in public employee disputes.[3]

The rash of work stoppages in the public sector in recent years has precipitated heated debate over the issue of whether the right to strike should be extended to public employees and, if not, how effectively to prevent strikes in the public service. The implications of this difficult question are numerous and complex. If public employees are prohibited from striking, for example, will this really make them "second-class citizens" in comparison with their private sector counterparts? Will strike bans obstruct meaningful discussions with public employers? Will such prohibitions actually deter public employees from resorting to this tactic?

On the other side of the coin, if public employees are not prohibited from striking, will this ensure parity with their counterparts in private enterprise? Will removal of a strike ban guarantee a meaningful employer-employee dialogue in arriving at the terms and conditions of public employment? Or will authorization of the right to strike generate more and more work disruptions?

The Commission believes compelling reasons exist for prohibiting any public employees from engaging in strikes. Neither legislative bodies, courts, or the general public have been persuaded to move in this direction. None of the 23 states having comprehensive public labor-management relations statutes have seen fit to lift this ban wholly or partially. Moreover, opinion polls indicate that public patience with striking state and local employees has begun to ebb rapidly.

To condone strikes is to facilitate disruption of essential public services which ultimately could bring government to a standstill. To condone strikes is to sanction putting the government employer, who lacks the weapons of his private counterpart, at the mercy of his organized workers. To condone strikes is to permit undermining the authority of government at a time when a growing majority of the American electorate feels that the symbols of governmental authority - if not the substance - are tattered and in need of mending. To condone government employee strikes is, in the final analysis, to reduce government to the level of just another corporate unit within our pluralistic society, and this is not conducive to a meaningful assessment of the nature, purpose, and basic functions of government in a democratic, representative system.

The Commission disagrees with those who argue that in this area the experience of private industry is wholly relevant. Bans on strikes by public employees do not make the public worker a "second-class citizen" in comparison with his private enterprise counterpart; they merely recognize the unique character and mission of government. Nor are such prohibitions necessarily incompatible with productive employer-employee discussions; meaningful dialogues are not produced by strike threats. Instead, they are based upon procedures which effectively guide the course of labor-management talks and produce a peaceful resolution of disputes. For this reason, state labor relations laws should provide specifically for an "arsenal of weapons" - such as mediation, fact-finding, and advisory arbitration - in order to resolve deadlocks. Procedural mechanisms and the strike are different means to the same end - improvement of the terms and conditions of employment. The former, since they recognize the special ground rules under which government has to operate, are infinitely preferable to the latter.

In the private sector, the strike weapon may be an appropriate device if only because the employer can counter it with his own economic power - the lockout. Moreover, the consequences of most work stoppages in private industry usually are not injurious to large numbers of people. But it is significant to note that private sector strikes endangering the public health, safety, and welfare have been enjoined.

To focus narrowly on the fact that certain employees in both the public and private sectors perform identical jobs and even belong to the same union, and then to argue that the line between the sectors has vanished is to tilt with windmills. When one government assumes a function which another government has not assumed or when one government divests itself of a role that others retain, the kind of political and public support for such acquiring or relinquishing places the functions governmentally performed into a special category. They are public functions, supported by public revenues, and geared to a goal that has been determined to be in the public interest.

Because of the essential nature of virtually all public services, because political - far more than economic - criteria are the basis for decisions concerning the terms and conditions of public employment, and because of the powerlessness of the public employer to counter strikes by his workers, work disruptions by any public employees simply cannot be tolerated; otherwise effective government is impossible. In this way, then, private and public employment are and must remain vastly different.

The Commission recognizes the recent support in some quarters - particularly 1968 study commission reports in Pennsylvania and Colorado - for a "limited right to strike" for "nonessential" employees. This proposal, however, contains a number of serious flaws. Objective criteria to determine the occupational categories which are "essential" and "nonessential" would be difficult to develop and next to impossible to implement. A real quandary would be specifying the conditions under which an occupation is "nonessential" and determining how long a strike by such employees could be tolerated. Moreover, to extend a right to strike to the often meager and unorganized ranks of those commonly thought of as "nonessential" employees would be virtually meaningless. Another important consideration is the adverse psychological impact an employing agency would create when it tells certain groups of its employees that since they are "nonessential" they may strike. For these reasons, the "limited right to strike" is neither desirable nor feasible.

The Commission likewise can see little justification or rationality in an approach that sanctions the right to strike on the one hand but makes enjoinable by the courts any work stoppages which would be detrimental to the public health, safety, or welfare - a caveat that could easily cover practically all employees. Such an approach throws the whole problem back into the courts. One reason for the current turmoil in the state and local public service is that many legislatures have abdicated their responsibilities for public labor-management relations to the bureaucracy, the juridiciary, and pressure groups.

The Commission is aware of the feeling in some quarters that state public labor-management relations laws should remain silent on the issue of whether public employees may or may not strike, since this approach ostensibly would permit greater flexibility in coping with delicate issues under discussion. It also is claimed that statutory silence would place government in a neutral posture on this controversial question. The Commission finds these arguments faulty. Statutory silence would inject uncertainty and confusion into the one area of public employer-employee relations where near unanimity prevails. It would expand the already wide discretion of the courts and the bureaucracy. Government, or at least its political branches, simply cannot remain neutral on the strike issue, for to do so would be to erase the demarcation between public and private employment. To expect governmental neutrality on a matter that may well encourage additional work stoppages is to be politically naive.

Meaningful flexibility in coping with disputes involves providing a range of viable mechanisms which can ultimately bring the parties to a mutually acceptable agreement. These procedures, not strikes, should be the real focal point of any relevant treatment of labor-management relations in the public service. No state statute dealing with this subject can afford to ignore this fundamental issue.

Recommendation No. 4
Internal Democracy and Fiscal Integrity of Employee Organizations

The Commission believes that the public interest and the preservation of public employee rights dictate that public employee organizations should adhere to certain basic rules and practices designed to assure internal union and associational democracy. Therefore, the Commission recommends that state labor relations laws bar recognition to any public employee organization whose governing requirements fail to provide for a "bill of rights" to protect members in their relations with the organization, standards and safeguards for periodic elections, regulation of trusteeships and fiduciary responsibilities of organizational officers, and maintenance of accounting and fiscal controls and regular financial reports. Such reports should be filed with an appropriate agency of the state, and made public upon receipt.

In considering the multi-dimensional nature of public employer-employee relations at the state and local levels, the question of union and associational democracy and integrity cannot be ignored. Experience in the private sector clearly demonstrates the need to include this matter in state public labor-management relations legislation. Yet, existing state laws dealing with public employees do not do so either under unfair practices or in a separate section.

Those arguing against statutory treatment of organizational democracy and fiscal integrity point out that existing federal legislation already covers all major labor unions. Consequently, any state legislation would be duplicative and unnecessary, and would bury employee organizations under mounds of paper work required to comply with these state-imposed safeguards. This line of reasoning is only partially true, however, since no professional association or independent employee organizations are covered by this national legislation. Some skeptics contend that genuine "union democracy" is a matter of proper internal organizational relationships and spirit, and that external legislation can never instill "democracy" if the essential foundation prerequisites are lacking. While there is some truth in this claim, it is also valid to contend that the kind of statutory provision called for here can establish a legal recourse for those seeking to secure intra-organizational democracy and a legal basis for monitoring the fiscal activities of employee unions and associations. Finally, still others argue that the failure of practically all states having public labor relations laws to include such a proviso is indicative of its irrelevance.

On the other side of the coin, simple equity dictates a balancing of the rights of employees against those of employee organizations. And meaningful discussions require organizational representation which genuinely represents a majority of the membership. Moreover, if a cloud of fiscal impropriety, if the hint of conflict of interest, or if the appearance or reality of oligarchy besmirches the reputation of even one employee organization, the electorate's willingness to sanction and support effective discussions between public employers and employees will be seriously undermined. Given the role of public opinion in influencing behavior in the governmental sector, propriety, representativeness, and responsiveness are even more essential as union or association traits here than in the private sector. The Landrum-Griffin Act and the "little Landrum-Griffin Acts" of at least 11 states, which require all employee organizations to comply with certain reporting and disclosure requirements, are all the more reason that public employee organizations should be subject to like provisions designed to guarantee internal democratic procedures and practices and to assure fiscal integrity.

Employer-Employee Relations

As the foregoing recommendations suggest, the Commission adheres to the view that basic policies with respect to public employer-employee relations at the state and local levels should be set forth in state legislation. Employee rights and limits thereon in such matters as organizational membership, strikes, and supervisory personnel are proper subjects for statutory treatment. Similarly, state laws should establish a viable framework for handling public labor-management discussions and for settling disputes between the parties. This portion of the report deals with Commission proposals which, in combination, constitute a system geared to overcoming barriers to a candid and constructive dialogue between public employers and employee organizations.

Recommendation No. 5
State Public Labor Relations Law

The Commission recommends that states enact legislation establishing the basic relationship between public employers and employees and their organizations in arriving at the terms and conditions of employment; absence of such legislation tends to encourage chaotic labor-management relations, especially in local governments where the evolution of these relationships is left to chance and to the ebb and flow of political power and influence of employees and their organizations and to widely varying administrative and judicial interpretations. There are two general routes such legislation might take: requiring public employers to meet and confer with employees and their organizations, and permitting or requiring state and local employing agencies to negotiate collectively with employee representatives. The Commission finds a considerable number of variations of each of these approaches. On balance, the Commission tends to view the meet and confer in good faith approach as being most appropriate in a majority of situations in the light of present and evolving conditions in state and local employment.[4,5,6,7]

Some 29 states have not enacted general legislation setting forth broad ground rules governing employer-employee relations in the public service. Moreover, nearly two-thirds of the municipalities over 10,000 population and over one-half of the urban counties surveyed in chapter three of this report lack laws or formal policies on this subject. These jurisdictions not only have failed to come to grips with a pressing intergovernmental issue, they have forfeited their basic responsibilities over to the courts, to the bureaucracy, and to the unpredictable play of political forces and the influence of employee groups.

The Commission is firmly of the opinion that in this critical area, as in many others, state governments must act, in order to fulfill their pivotal role in the federal system and to avoid being bypassed. Regardless of whether they choose a "conservative," "liberal," or "middle-of-the-road" policy with respect to public labor-management relations, it is absolutely essential that state legislatures make this decision and then implement it clearly and forthrightly in law.

Existing legislation which deals comprehensively with public employer-employee relations takes one of two basic forms: collective negotiation or meet and confer. Great interstate differences, of course, exist in the treatment accorded public employees under either approach. Both types of statute may deal extensively, or sketchily, with the rights of employees, the strike question, and coverage by level of government or occupation. But meet and confer laws generally are less comprehensive than those governing collective negotiations. In particular, they usually treat more superficially the questions of representation, administrative machinery, dispute settlement, and unfair practices. Moreover, they usually accord a different status - a superior one - to the public employer vis-a-vis employee organizations.

While both systems involve continuing communication between the employer and employee representatives, under collective negotiations both parties meet more as equals. The employee organization's position is protected by statutory provisions relating to organization rights, unfair practices, third party intervention in disputes, and binding agreements. The labor and management negotiators hopefully will arrive at a mutually binding agreement which is a byproduct of bilateral decisions. If they reach an impasse, the law generally sets forth a range of procedures to be followed, including such third-party assistance as mediation, fact-finding, and arbitration. The strike ban and the practical difficulties in making agreements binding, however, sometimes produces a system that is much less than bilateral.

Under a meet and confer system, the outcome of public employer-employee discussion depends more on management's determinations than on bilateral decisions by "equals." In some jurisdictions, the public employer may be under statutory obligation to "endeavor" to reach agreement or to "meet and confer in good faith" with an employee organization. If an agreement is reached, it is put into writing, but it normally does not become binding on the employer until such time as the legislative body takes appropriate action with executive concurrence. In other jurisdictions, the meet and confer system does not go this far, since management retains the exclusive right to act when and how it chooses concerning procedures for entering into discussion with employee organizations.

Most meet and confer laws also give the employer the final "say" in the adoption and application of rules for employee organization recognition and of methods for settling disputes and handling grievances. Legislative criteria relating to thses matters usually are lacking.

Fourteen states have enacted mandatory collective negotiations laws, while two have passed legislation permitting management to negotiate with unions and associations. Five states have meet and confer statutes under which the public employer is required to discuss the terms and conditions of employment with employee organizations and authorized to enter into non-binding memoranda of understanding with such representatives. In the absence of an express statutory authorization or laws to the contrary, other jurisdictions have conferred or negotiated with their employees on a de facto basis. Finally, a few states and some local governments have flatly refused to engage in either negotiations or discussions with employee organizations.

A major reason for these wide differences in practice is lack of consensus on the relationship between governmental sovereignty and the public labor-management dialogue. While some jurisdictions continue to cling to traditional interpretations of this doctrine, others are seeking to adapt it to, or as some would argue, move it ahead of contemporary conditions. A related issue is the belief of some public employers that they, as well as their employees, have certain "rights" which should not be surrendered or abridged through entering into a negotiating relationship with unions and associations. Some phrase this argument in terms of the multiple responsibilities falling upon anyone assuming the tough assignment of political executive at this point in time, and the corresponding duty of the public employer to balance the conflicting demands and pressures swirling around him.

The existence of certain basic differences between the private and public sectors also affects the extent to which public employers are willing and able to deal with the their employees and with employee organizations. The major and perhaps controlling distinction between labor-management relations in the private sector and those in state and local governments is that neither the employer nor the employee in the latter case are really at liberty to bargain freely. Both parties must operate within the limits of applicable laws and regulations, the full view of public opinion, and the very real world of politics. Both parties must recognize that essential public services, especially in the fields of health and safety, have to be maintained and cannot be allowed to be disrupted by slowdowns or work stoppages. Public employers, in contrast to their counterparts in the private sector, do not have the option of shutting down services and facilities if they feel employee demands are unreasonable. Correspondingly, employee organizations do not have the option of striking legally. Another unique dimension of the problem is the political overtones inherent in confrontations between public management and employee unions and associations. Many services of government are monopolistic, mandated by law, and supported by revenue derived from taxation. Consumers cannot refuse to "buy" them, nor can they lawfully refuse to pay taxes. Any constraints on the availability of these services as a result of public employee activities inevitably will generate hostile public attitudes and possibly political retaliation. Finally, the fact that government is directly responsible to a general electorate, not any specific segment thereof, is a paramount factor differentiating the public and private sectors.

Those supporting the meet and confer approach to public employer-employee relations stress the differences between public and private employment, and consequently seek to maximize managerial discretion. Those favoring collective negotiations recognize these differences, but find them no major or insuperable barrier to meaningful bilateral relations among "equals."

The Commission is aware that a strong case can be made in support of the collective negotiations approach. It has heard the argument that equitable and workable public labor-management relations can only result from reciprocal and bilateral dealings. It fully recognizes that 16 states have enacted legislation either requiring or permitting public employers to engage in collective negotiations with employee organizations. In understands that this procedure generally imposes a mutual obligation on the public manager and the exclusive bargaining representative to meet at reasonable times and to negotiate in good faith, and that the results of negotiations over grievance procedures and other personnel matters - including wages, hours, and working conditions - must be reduced to a binding, written agreement.

The Commission has heard the argument that the sovereignty of government tenet should not preclude collective negotiations in the public service. It accepts the fact that the traditional doctrine of sovereignty has been modified already through practice; obviously, if government allows itself to be sued and if it signs contracts with private contractors which contain provisions for the binding arbitration of disputes, then acceptance of certain restrictions on its discretion in dealing with public employees does not undermine its sovereign status. It has considered the related contention that rather than delegating or abdicating sovereign authority a public employer only agrees to limit its powers in a certain area for a given period of time when it enters into a contract with its employees. But it is also cognizant of the fact that, if necessary, agreements which the public employer made on a voluntary basis can be repudiated, and affected employees would lack any legal recourse. This, of course, makes a mockery of one of the distinguishing features of collective bargaining systems. The Commission fully understands the implications of the broad claim that willingness of a government to engage in collective negotiations with its employees should be viewed mainly as a matter of enlightened personnel policy designed to improve labor-management relations through bilateral - rather than unilateral - determination of the terms and conditions of public employment.

On balance, however, the Commission believes another approach is more appropriate, given contemporary and evolving conditions in state and local employment. Twenty-nine states have taken no general legislative action in this controversial field, and it is these states as well as those having unworkable public labor-management laws to which the Commission's recommendation is addressed. What kind of system can be established which will bring about real progress in ensuring employee and employer rights; in promoting the position, pay, and prestige of public employees; and in preventing work disruptions?

At this point in time, the crying need in a majority of situations is for a general statute that balances management rights against employee needs, recognizes the crucial and undeniable differences between public and private employment, and establishes labor-management relationships in which the public-at-large and their elected representatives have confidence.

The Commission believes that legislation embodying the essentials of a meet and confer in good faith system constitutes this kind of statute. "Meet and confer in good faith," as we view it, means the obligation of both the public employer and an employee organization to meet at reasonable times, to exchange openly and without fear information, views, and proposals, and to strive to reach agreement on matters relating to wages, hours, and such other terms and conditions of employment as fall within the statutorily defined scope of the discussion. The resulting memorandum of understanding is submitted to a jurisdiction's governing body, and it becomes effective when the necessary implementary actions have been agreed to and acted on by pertinent executive and legislative officials.

To a greater degree than collective negotiations, the meet and confer approach is protective of public management's discretion. To a greater extent, it seeks a reconciliation with the merit system since agreements reached through the discussional process and actions taken as an implementary follow-up cannot contravene any existing civil service statute. To a far greater degree than collective negotiations, it is candid and squarely confronts the reality that a governmental representative cannot commit his jurisdiction to a binding agreement or contract, and that only through ratifying and implementing legislation and executive orders can such an agreement be effected. To a greater extent, it avoids detailed, statutorily prescribed procedures applicable to all situations, and this lack of specificity in some degree and in some areas permits greater flexibility and adaptability in actual implementation. To a much greater degree, it recognizes - indeed, is rooted in - the vital differences existing between private and public employment, and does not make the mistake of relying heavily on the National Labor Relations Act as a blueprint for action in the public service.

"In good faith" has a number of important connotations as it applies to the meet and confer process. It obligates the governmental employer and a recognized employee organization to approach the discussion table with an open mind. It underscores the fact that such meetings should be held at mutually agreeable and convenient times. It recognizes that a sincere effort should be made by both parties to reach agreement on all matters falling properly within the discussion's purview. It signifies that both sides will be represented by duly authorized spokesmen prepared to confer on all such matters. It means that reasonable time off will be granted to appropriate agents of a recognized employee organization. It calls for a free exchange to the other party, on request, of non-confidential data pertinent to any issues under discussion. It implies a joint effort in drafting a non-binding memorandum of understanding setting forth all agreed upon recommendations for submission to the jurisdiction's appropriate governing officials. It charges the governmental agent to strive to achieve acceptance and implementation of these recommendations by such officials. It affirms that failure to reach agreement or to make concessions does not constitute bad faith when real differences of opinion exist. It requires both parties to be receptive to mediation if bona fide differences of opinion produce an impasse. Finally, it means that the state public labor-management relations law should list as an unfair practice failure to meet and confer in good faith, thereby providing a basis for legal recourse.

These special obligations convert the system into something broader and more balanced than the usual "meet and confer" setup, but still something less than the glittering and often unfulfilled promises of a collective bargaining statute.

Recommendation No. 6
Management Rights

To ensure proper executive and legislative responsibility for public activities and services, the Commission recommends that state labor relations laws stipulate that agreements resulting from public employer-employee discussions be governed by the provisions of any pertinent existing or future laws and regulations, including such merit system rules and regulations as may be applicable. Within this framework, state labor relations laws should provide that public employers retain the unrestricted right: (a) to direct the work of their employees; (b) to hire, promote, demote, transfer, assign, and retain employees in positions within the public agency; (c) to suspend or discharge employees for proper cause; (d) to maintain the efficiency of governmental operations; (e) to relieve employees from duties because of lack of work or for other legitimate reasons; (f) to take actions as may be necessary to carry out the mission of the agency in emergencies; and (g) to determine the methods, means, and personnel by which operations are to be carried on.

The meet and confer in good faith system of public labor-management relations clearly seeks in various ways to recognize the distinctive, dependent, and exposed position of the governmental employer and the concomitant need to provide some safeguards. At the same time, this approach recognizes certain basic employee rights, establishes orderly methods of communication between employers and employees, provides dispute resolution machinery, and places certain obligations on both parties with respect to the consultative process.

Management rights emerge then as a cardinal feature of the meet and confer system, and as the critical balance to the rights, privileges, and powers accorded employees. They can be treated statutorily as a detailed separate provision, as a general statement buttressed by specific unfair employee practices, or as a restriction on the scope of discussions.

Management rights also present a problem in collective negotiations laws, since variations of such "rights" may be included as legitimate subjects for employer-employee negotiations. At the same time, such statutes may contain provisions which promote and protect management rights, including those of Connecticut, New Hampshire, Maine, New York, and Wisconsin.

The Commission believes statutory description of management rights is necessary if well defined parameters to discussions are to be established. In a democratic political system, dealings between public employers and public employee organizations - whether they are called negotiations or discussions - must necessarily be limited by legislatively determined policies and goals. This may involve merely a restatement of basic management prerogatives and civil service precepts. Listing such rights in law eliminates many of the headaches of administrative elaboration and some of the cross pressures generated by ambiguities. Wages, hours, and other terms and conditions of employment, however, are left for the conference table. Hence, the framework for a meaningful dialogue remains intact.

Those opposing detailed specification of management rights in meet and confer laws advance a mixed bag of arguments. Some contend that such rights should be within the scope of discussion, not bargaining, and management makes the ultimate decision concerning coverage of agreements. Others contend that it is redundant, if not foolish, to include such a provision in a meet and confer statute, since such an act is in its entirety nothing more than a lengthy assertion of employer prerogatives. These critics also point out that most existing meet and confer laws do not list management rights. Finally, some of the more employer-oriented critics cite the danger of specificity, especially the possibility of overlooking significant rights.

All things considered, the Commission favors incorporation of a specific provision on management rights. Experience in certain meet and confer states shows that as employee organizations wax strong discussions can - in a de facto sense - escalate to the level of negotiations. It is likely that any concession made at the conference table by the employer's representative in connection with management rights or civil service procedures would lead to memoranda of understanding which subsequently could only be repudiated by higher authority. This would create serious tension between the parties and possibly would lead to work disruptions.

It is transparent, then, that public employer-employee agreements should facilitate - not impede - the conduct of public business, and that the weakness of government in terms of its inability to close down an operation must be acknowledged and compensated for. It is clear that certain meet and confer systems argue for specificity - the federal system established by Executive Order 10988 and its successor, for example, as well as the model ordinance developed by the League of California Cities and adopted by many localities under the California law. Finally, it seems sensible to include a provision of this type especially in a system, such as is proposed in this report, that departs substantially from the regular meet and confer mold.

Recommendation No. 7
Coverage

The Commission recognizes the existence of considerable diversity between and among the states and their local governments in the conditions of public employment, provisions of merit systems, and constitutional and statutory provisions relating to the structure of local government. The Commission, however, believes it desirable to establish within this diverse framework a system of public labor-management standards on a statewide basis which, to the greatest extent possible, extends the same rights to and imposes the same responsibilities on both state and local employees. Therefore, the Commission recommends that under state labor relations legislation, the treatment accorded to state government and to local government employment be generally uniform as between the two, and further that such legislation be compatible with constitutionally established merit system procedures.

Any state considering the need for and possible content of public labor-management relations legislation must face the critical and complex issue of who should be covered. A single law, for example, might be enacted to cover all employees of the state and its political subdivisions. On the other hand, two separate laws might be enacted to cover state and local employees respectively. Another dimension of the coverage problem is whether special occupational categories - such as teachers, policemen, or firemen - should be excluded from a comprehensive statute and treated in separate legislation.

The Commission endorses the single law approach, but appreciates the reasons advanced for enactment of separate statutes. At the same time, it underscores the need for achieving generally uniform treatment of state and local employees by according them, to the greatest extent possible, the same rights and privileges and assigning them the same types of responsibilities.

In states with an integrated personnel system, with a tradition of state legislative involvement in local employee matters, or with weak "home rule" provisions, a single act would best serve this goal of parity of treatment. Local public employee-employer relations generally, and especially in states having these traits, are not essentially different from those of the state whether they involve representational questions, the need for dispute settlement procedures, or prohibited practices. A single law with a single administrative system having jurisdiction over both levels of government can provide for more economical and uniform operation of the act. Moreover, regardless of the distinctive characteristics of a state's overall personnel system, the organizational features of most public employee unions and associations as well as their interjurisdictional tactics mean that a labor problem that begins as a localized matter ultimately can have a statewide impact and vice-versa. For these reasons, a single state law is essential to ensuring equity and stability in public labor-management relations.

Likewise, the Commission feels the state statute should deal with all occupational categories of public employees. Even though over one-third of the states have enacted special legislation affecting particular groups of employees, the Commission concurs with the conclusions of several recent studies on this subject to the effect that separate statutory treatment of certain types of public employees is incompatible with the need for a smoothly-functioning labor-management relations process in the public service.

The special legislation approach tends to favor only those few well-organized employee groups which can apply political pressure frequently and effectively at the state and local levels. If special attention were given teachers, firemen, and policemen, it would be difficult to justify not extending such treatment to transit workers, sanitation workers, or any other types of employees with political "muscle." The lobbying activities of organizations are focused primarily upon improvement of employment conditions for their own members, and the divisive effects of such special interest pleading can only weaken the establishment of an effective labor-mangagemnt relations system applicable to all public employees. A basically uniform employee relations policy, then, should prevail irrespective of level of government or type of occupation.

A variation of the single act approach is statutory coverage of both the state and local levels and all occupational categories, but inclusion of sufficiently flexible provisions to permit a sensible and relevant application to a variety of local situations. This option is another feasible way of implementing the Commission's goal of providing generally equal treatment of state and local employees while recognizing varying local needs and home rule traditions. The New York State Public Employee Relations Act, for example, allows local governments to establish their own administrative machinery or to utilize the services of an independent state agency. If the former alternative is chosen, assurance must be given that state legislative policy is being followed.

Finally, in states with personnel and civil service systems which differ significantly from those of their local jurisdictions or where home rule is strongly protected, a separate act for each level might be the only workable approach. Nevertheless, substantially the same rights and duties should still be accorded all state and local employees and employers.

Recommendation No. 8
Administrative Machinery

The Commission believes that state policy relating to management-employee relations in the public sector will have little significance unless there is appropriate machinery to resolve recognition and representation disputes, ensure adherence by all parties to the law, and provide the means of facilitating the resolution of controversies arising out of employer-employee impasses. The varying and special conditions within each state, however, must determine the most suitable type of administrative agency, including (a) the availability of existing administrative machinery; (b) the anticipated volume of cases; and (c) the relative neutrality of the unit to which the public labor-management relations function might be assigned.

Establishing appropriate machinery to administer public labor-management relations laws is important for four basic reasons. First, existence of some such machinery is essential in order to resolve disputes arising from selection of the employee organization to serve as majority representative. This problem occurs frequently in the public sector, and it is particularly troublesome when rival organizations are seeking formal recognition as the majority spokesman and the special negotiating privileges such recognition confers. Second, an administrative unit or board serves as a regular and recognized forum for hearing complaints over such matters as unfair practices and organizational membership rights, for assessing their validity, and for providing necessary remedies. Third, an administrative unit can help resolve impasses by putting the parties back on the road to a settlement through providing directly or indirectly for third-party mediation, fact-finding, or advisory arbitration. Finally, effective and expeditious implementation of a meet and confer in good faith, as well as a collective negotiations system, will require the kind of interpretations and rulings that an administrative unit can make; court dockets should not be clogged with a heavy load of clarifying cases. Full-fledged implementation also will require the kind of early answers and easy access for both parties in a deadlocked dispute that adequate administrative machinery can provide.

To ignore the need for administrative machinery is to assume that most of the state public labor-management relations law is self-executing. Varying interpretations of the statute by local jurisdictions and time-consuming judicial proceedings, then, should not be incompatible with establishing a viable meet and confer framework. The Commission strongly rejects these naive assumptions. It urges creation of appropriate administrative machinery in the belief that the peculiar traits of the public service, especially the strike prohibition, and the distinctive ground rules of the "meet and confer in good faith" system dictate the presence of an administrative arbiter or umpire to monitor the procedures designed to ensure meaningful discussions and to provide its good offices when an impasse occurs.

On the question of the most suitable type of agency for handling these functions, the Commission has a more flexible point of view. No clear pattern has emerged among the states having public labor-management relations laws in the types of administrative machinery used to implement their statutes. In Alaska, Connecticut, Delaware, Maine, Massachusetts, Michigan, Rhode Island, Vermont (for local employees), Washington (for local employees), and Wisconsin among the collective negotiations states and in Minnesota, Missouri, and South Dakota among the meet and confer states, the public employee relations function is lodged in a major functional department or a special office or board within an existing department of labor and industry. The state civil service agency or commission administers the collective negotiations program for state employees in Massachusetts and Washington and the meet and confer program for those in Michigan. Where only teachers are affected, the state board of education often has been designated as the administering unit, although in some states local school boards serve in this capacity. Finally, a new independent agency has been created to concern itself solely with public sector collective negotiations in six states - Nevada, New Hampshire, and Vermont for state employees; New Jersey, New York, and Oregon for all public employees.

The Commission suggests that states examine the availability and capability of existing machinery, and weigh the advantages and disadvantages of adding the public employee relations responsibility. One pertinent factor (if the act covers both levels) is whether there are a large number of state and local employees. Another consideration is whether a heavy volume of cases can be anticipated. In these instances, establishment of a new administrative unit to handle public sector problems might well be justified.

The Commission emphasizes that the administrative agency must enjoy the confidence of both the public employer and employee organizations. In dealing with the problems of public labor-management relations, new approaches are called for - approaches usually quite different from those applied in private industry. In general, administrative responsibility should be placed in the hands of persons thoroughly familiar with public employment problems and, most importantly, those having a reputation of neutrality. If an existing department is too closely identified with a particular branch of organized labor, if a civil service commission is viewed as an arm of management, or if an education agency is linked to school boards or superintendents, doubts about the agency's impartiality could be raised.

In an effort to ensure mutual confidence in collective bargaining by both employee organizations and the public employer, New York City's collective bargaining law provides for the establishment of a tri-partite administrative body. Under this arrangement, an equal number of members are appointed by the mayor and by public employee organizations. These members then select the remaining public members of the board, one of whom is designated chairman.

Regardless of the approach taken, the organizational location, composition, and mode of appointment of the unit should all be geared to bolstering expertise, sensitivity, impartiality, and common sense. The Commission does not believe that the record to date points to any "pat" procedures for guaranteeing these traits. Each state must chart its own course in this sea of unknowns.

Recommendation No. 9
Forms of Recognition

The Commission recommends that the states include in their public labor relations legislation a provision which requires public employers to grant full meet and confer rights by formal recognition of employee organizations with majority support.

The legal right of a public employee to join a union or association is meaningless unless it also includes the right of recognition. The Commission believes this question should not be left to decisions of the courts, opinions of the state attorney general, or administrative orders. Statutory authorization would resolve any doubts of public officials concerning the legality of their actions and would establish a uniform statewide meet and confer policy on the matter of employee organization recognition. Ignoring this issue undermines one of the basic purposes of public labor-management relations legislation. How can meaningful discussion occur if one of the two major participants is not recognized as spokesman for the majority of employees and is not sitting at the conference table?

The meet and confer laws of Minnesota and South Dakota provide for two forms of recognition - informal and formal. Each meets certain needs under this system. Informal recognition is given to any employee organization regardless of the status that may have been extended to any other union or association. This type of recognition is simply an extension of the right of any public employee to be heard, and establishes the right of a minority group to submit proposals and to explain its position.

Management officials, however, are not obligated to seek the views of minority organizations.

Formal recognition is given to an employee organization chosen by the majority of employees in a unit. In its dealings with management, this organization speaks for all members of the unit, and any agreement that is reached applies to these employees. Other organizations continue to receive informal recognition and may present their views to management, but only one voice may speak for all employees in a unit.

Supporters of the two-level (informal-formal) recognition approach argue that the willingness of public employers to listen to the views of any public employee, union, or association is a necessary and distinctive trait of the meet and confer system. This openness gives individuals, minority organizations, supervisory groups, as well as the majority representative a chance to have their voices heard. If an employer adopts rules for majority representation, then, certain minority organization rights should also be recognized. Refusal to recognize an employee organization on the basis that it failed to represent a majority of those in a unit would impair the fundamental right of employees to form, join, and participate in unions or associations of their own choice and to be represented by such organizations in dealings with the public employer. Balancing the interests of the majority representative and minority groups is achieved through the informal recognition technique. Management, from a practical point of view, clearly cannot meet and confer with a mass of small organizations. Formal recognition circumvents this problem. Informal recognition, on the other hand, protects minority organization rights and serves as a check on the potentially arbitrary views of the majority representative.

The Commission believes that state public labor-management relations statutes should require public employers to accord by formal recognition full meet and confer rights to the organization representing a majority of the employees in an appropriate unit. The Commission believes that this preferred treatment accorded the majority representative should condition the approach to minority groups, and that extension of informal recognition privileges to such organizations should not be required by state public labor-management relations laws.

Legislators have basically two options regarding minority groups which are compatible with this position. Management could be statutorily barred from extending any informal recognition privileges to such organizations, and this would have the effect of giving exclusive recognition rights to the majority organization. It also would conserve management's time and eliminate its tough task of keeping informal consultations from becoming de facto negotiations, especially on such noneconomic issues as the agency's "mission." On the other hand, public employers could be authorized to extend, at their own discretion, informal recognition to minority organizations for the purpose of submitting proposals. This variation of the two-level approach meets the varying needs of the individual public employer and the varying strengths of employee organizations.

Recommendation No. 10
Dispute Settlement Procedures

To assist in the resolution of public employer-employee disputes the Commission recommends that the states in their labor relations statutes incorporate provisions authorizing mediation at the request of either party. The Commission further recommends that public employers be authorized to adopt such additional procedures as may be necessary for the resolution of disputes after unsuccessful efforts to reach agreement with employee organizations.

The procedures designed by states and their political subdivisions to resolve disputes are vital features of meaningful discussions between employers and employee organizations. Avoiding work disruptions will depend largely on the perfection of these procedures in the event an impasse is reached. Moreover, failure to provide effective ways to handle disputes when a strike ban has been imposed does little to establish an equitable basis for joint discussions.

The Commission endorses inclusion in state labor-management statutes of a provision authorizing mediation of disputes, and sanctions assignment of this function to the agency responsible for administering this law. Following the Minnesota act, the Commission recommends use of this procedure at the request of either the public employer or the recognized majority representative. Although this approach somewhat limits management's discretion, it is more even-handed and expeditious than if either party had a veto. It avoids the necessity of having both the public employer and the majority organization obliged to reach a joint decision in order to submit a dispute for mediation - in many instances an unlikely event, given the fact that the parties may have reached a point of bitter deadlock. Failure on the part of either disputant to meet with a conciliator would, of course, constitute evidence of bad faith and would serve as a basis for corrective administrative or judicial action. Management, however, still is under no obligation to make special concessions or to agree to proposals.

Mediation only involves efforts of an impartial third party to assist the disputants in reaching a voluntary resolution of an impasse through suggestions, interpretations, or advice. Mediation proceedings should be closed to the public and the mediators should take no public stand on the issues in controversy. In short, mediation poses no real threat to anyone. Yet, it may well bring issues into sharper focus, and this can lead to an agreement. It may also constitute one of the most valuable services provided by the administrative agency established by the meet and confer statute.

The Commission also believes the differing needs of individual jurisdictions and the variety of impasse situations which can arise require statutory authorization to permit management to adopt a range of other dispute settlement procedures. The specific approach taken here follows the California act and would allow the public employer, after consultation with employee organizations, to adopt other reasonable procedures for resolving disputes. Mediation clearly is critically important, but it is only one of many in the arsenal of weapons that should be made available for breaking deadlocks. Other procedures might include public or private fact-finding and advisory or binding arbitration. The decision to utilize any of these other devices must be retained by the employer. After all, under fact-finding and advisory arbitration, third party recommendations usually are publicized, and this can constitute a form of pressure on both parties. Under binding arbitration, management would be consciously abdicating its final discretion. Even here, however, the Commission believes strongly that the realities of the 1970's dictate the availability of binding arbitration if the local employer wishes to make use of this option in order to avoid strikes.

Provision should be made to ensure these dispute settlement procedures rest on a firm financial basis. Some contend that the state should assume full or a major share of the fiscal responsibility, given the state's prime interest in achieving stability in its employee relations and those of its political subdivisions, and its basic concern with avoiding any disruption of public services at either level. These spokesmen also note that some jurisdictions and employee organizations, particularly smaller ones, occasionally find it difficult to pay their share of the cost of mediation, fact-finding, and arbitration services. Based on experience in a number of states, others argue that the various procedures should be handled on a different cost-sharing basis, with the state bearing all or most of the expense and the parties to a dispute assuming some or all of the cost of fact-finding or arbitration. In any event, the state law should not be silent on this mundane, but significant, problem.

Recommendation No. 11
Prohibited Practices

The Commission recommends that the states in their labor relations legislation enact provisions prohibiting the restraint or coercion or employees in the exercise of their guaranteed rights and obligating both public employers and employee organizations to meet and confer in good faith.

The question of prohibited practices is a basic differentiating factor between the "typical" meet and confer and collective negotiations statutes. A majority of the collective bargaining laws contain a fairly detailed specification of unfair practices for both management and employee organizations. But none of the existing "meet and confer" legislation goes into detail on this crucial matter. The Commission believes the "meet and confer in good faith" formula corrects this deficiency, since it establishes criteria for insuring that the parties will uphold their responsibilities in the discussion process.

Each approach includes a "non-interference" clause. The basic purpose of such a provision, of course, is to protect employees from punitive employer action as a consequence of their organizational activities. In some instances, its aim is to protect the individual employee from both the employer and employee organizations. The latter type of safeguard is perhaps best exemplified in the California act: "Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against public employees because of their exercise of their rights." Basically, however, a non-interference clause is an attempt to guarantee statutorily defined employee rights and to provide the basis for administrative or judicial action against blatant anti-union activities on the part of management. In the California case, it also serves as a basis for action against anti-individual activities on the part of public employee organizations.

A second type of prohibited practice found in two of the state statutes (California and Minnesota) deals with the refusal of either party "to meet and confer in good faith." While precise definition of the phrase "in good faith" is the subject of some disagreement, the intent of such language is to establish legally the mutual obligation of public employers and recognized employee organizations to meet and confer in order to exchange freely information, opinions, and proposals, and to try to arrive at agreements on matters falling within the scope of discussion. In effect, this proviso adds a distinctive and dynamic element to the usual meet and confer system because it provides a basis for administrative appeal and, if necessary, judicial action, when basic rules of the game are violated by either party.

"Good faith" is partly a matter of attitude and partly a matter of action. As such, to some observers it seems a vague and non-viable basis for establishing a mutually binding duty to talk and to strive for understanding. Yet, the Commission believes that insofar as a public labor-management relations law spells out some basic procedures, rights, and responsibilities, then grounds exist for determining "bad faith." Furthermore, since the administrative agency is charged specifically with ensuring adherence by all parties concerned to the law, immediate recourse is available for those alleging dilatory tactics and "bad faith."

Examples of "bad faith" on the part of either party include chronic inability to meet at reasonable times; sustained withholding of relevant proposals or information during the course of discussions; giving prime attention to matters fully outside the bounds of discussion; failure to designate a duly authorized spokesman; and delay or failure to exchange relevant, non-confidential data. Frequent shifting of position and heavy absenteeism during mediation sessions probably would provide evidence of "dilatory tactics," hence of "bad faith." Failure on the part of the management representative to present to his superiors recommendations on which the parties have agreed also would fall in the same category.

The foregoing actions, if unchecked, would undermine the integrity of the dialogue between the parties. Consequently, the matter of unfair practices should be confronted squarely by legislators attempting to draft public labor-management legislation. If not, meet and confer in good faith becomes a mockery. If the implications regarding fair procedures are ignored, "in good faith" becomes merely a slogan.

Similarly, collective negotiations legislation cannot achieve its basic purpose of establishing a bilateral basis for public labor-management relations if unfair practices are treated sketchily or are applied to labor only. Of the sixteen collective bargaining statutes, five fail to go beyond a simple "non-interference" provision. Bilateralism in the bargaining process clearly is something less than secure when it rests on such an elusive basis. This aspect of collective negotiations differs in no major respect from the current meet and confer system.

Recommendation No. 12
Exchange of Public Personnel Data

The Commission recommends that state labor relations laws establish procedures to assure the exchange of relevant public personnel data between and among employing agencies and employee organizations. The Commission further recommends that states and localities take steps to facilitate the gathering of such data on a metropolitan, regional, and statewide basis.

Before labor and management can hope to come to an agreement on a dispute, they need to reach an understanding on the facts at issue. It seems advisable, then, in the interest of facilitating discussions and promoting mutual trust and good faith, that everything possible be done to make the same public personnel data available to both parties. When this is done, discussions to some extent can be based on these facts, and arguments concerning their reliability and availability can be avoided.

State government has a stake in encouraging both sides to exchange relevant personnel data since it has a paramount interest in developing and maintaining healthy public employer-employee relations. The state through its public labor-management relations legislation should require public employers and employee organizations to disclose fully to the other side all the facts of public record on which claims are based or which otherwise are pertinent to the issues under discussion. Non-fulfillment of this requirement should be deemed a failure to meet and confer in good faith and should constitute another specifically defined prohibited practice.

On a more positive note, states and their political subdivisions should make concerted efforts to collect on a regular basis the kind of data expected to be needed in the course of public employer-employee relations. While it is often contended that employing agencies have much better data available than employee organizations, sometimes the shoe is on the other foot. Regularized procedures for gathering and updating comparative data on a metropolitan, regional, statewide and, perhaps for certain specialized positions even on a nationwide basis, for example, would be helpful to both sides at the bargaining table. The gathering of this information might be assigned to a metropolitan (or regional) council of governments or to some comparable areawide body, and it then could be used by individual jurisdictions as a basis for their respective discussions. State and local organizations of public officials also might collect such data.

Both councils of governments and organizations representing state and local officials also might wish to consider expanding their information gathering capability to include provision of technical assistance and advisory services on public labor-management relations. Some components of this effort are already part of the programs of certain state leagues of municipalities. The California, Massachusetts, Michigan, Pennsylvania, and Wisconsin leagues, for example, provide extensive information services to their members on public employee-employer relations problems. A broader endeavor might include consulting directly with local officials, providing mediation and arbitration services, sponsoring workshops, and making continuing analyses of agreements. A related development involves the tentative plans of the National League of Cities and United States Conference of Mayors to establish a joint service-oriented program on public labor-management relations for elected city officials.

Finally, not to be overlooked in a discussion of the ways and means of developing up-to-date and relevant data is the role of the state agency established to administer the meet and confer statute. Certainly its key functions would include serving as a clearinghouse for public personnel information and as a source of technical assistance.

Recommendation No. 13
Dues Checkoff

The Commission recommends that state labor relations laws permit public employers, on the voluntary written authorization of the employee, to regularly withhold organizational dues from the employee's wages and to transmit such funds to the designated union or association. The Commission recommends further that only those employee organizations which have been recognized as representing a majority of the employees in an appropriate unit be eligible for such dues checkoffs.

Dues checkoff can assist the individual employee who belongs to a union or association and it can serve as a form of union security for the recipient organization. After weighing the various possible approaches to handling this issue, the Commission urges that state public labor relations statutes should include a provision that permits - but does not require - public employers, on the written request of individual employees, to deduct organizational membership dues from wages. At the same time and in keeping with its doctrine of according a preferred position to public employee organizations representing a majority of the members in an appropriate unit, the Commission believes that only organizations of this type should benefit from dues checkoffs.

While no existing meet and confer statute authorizes this practice, the proposal advanced here is wholly compatible with the underlying theme of this form of public labor relations system. The authority after all is wholly discretionary and involves no real loss of management prerogatives. Moreover, while ten of the sixteen existing collective negotiations statutes fail to authorize specifically dues checkoff, inclusion of such a provision would be wholly compatible with the basic goals of this type of legislation.

If management decided to permit withholding, the resulting administrative arrangements, in most cases, would not impose unmanageable burdens since procedures already exist, pursuant to the laws of many states, through which employers make deductions from their employees' wages for such purposes as charitable contributions, health and life insurance payments, and savings bonds purchases. Where public employers allow a dues checkoff, regularity in such deductions would be assured and closer working relationships between the employing agency and formally recognized representatives of its employees would be promoted.

By restricting eligibility to majority employee organizations, a basis for strengthening the relations between the public employer and such organizations is afforded. Moreover, by making this practice a discretionary matter, management acquires an extra item on which it can negotiate from a position of strength.

While the Commission obviously does not oppose minority organizations, deduction of dues for members of these groups probably would generate conflict and instability in employer-employee relationships. In addition, it might overburden the administrative system, since in the absence of objective criteria for distinguishing among minority organizations, all such groups would probably have to be included in the checkoff.

Recommendation No. 14
Multi-Jurisdictional Cooperation

The Commission recommends that local governments and public employee organizations with the cooperation of the state effect appropriate arrangements for meeting and conferring on a regional basis.

Experience with regional collective negotiations arrangements in Canada and in some European countries suggests that a similar approach might be possible in some metropolitan areas in the United States. Regional machinery for collective negotiations is currently being utilized by several jurisdictions in the Vancouver, British Columbia, metropolitan area. These municipalities jointly gather and exchange data on wage and salary trends and contract settlements as a basis for independent negotiations by the individual jurisdictions. Three of these municipalities have established a central bargaining committee which is empowered to conduct negotiations in each of the communities.

In the United States, since 1967 the seven-county Minneapolis metropolitan area has experimented with regional meet and confer arrangements paralleling somewhat the Canadian and European experience. A Managers' Negotiating Committee - composed of five managers appointed by the Metropolitan Area Managers' Association - and representatives of Local 49 of the International Union of Operating Engineers (IUOE), have acted on behalf of 90 percent of the municipalities in the area. The chief purpose of the parties ts to arrive at a mutually acceptable agreement that can be submitted to participating cities as an overall guideline for action. The conferees are not authorized to make binding commitments on behalf of public employees or city councils.

The impetus for handling discussion on an areawide basis could come from either public employee organizations, public employers, or both. Since an increasing number of organizations of local employees are affiliated with national unions, their basic objectives generally do not differ greatly from jurisdiction to jurisdiction in metropolitan areas. Consequently, areawide discussions might well be possible where a metropolitan agency exists or one could be created to represent the participating communities and empowered to enter into discussions for each of the municipalities. Where a council of governments or other areawide body has been established, this assignment could be placed in its hands. In other areas, an independent joint labor relations committee or board could be appointed to represent employing agencies. Public employers might well support areawide discussional arrangements as a means of discouraging employee organizations from "playing off" one municipality against the other in discussing the terms and conditions of employment.

Skeptics feel this approach involves too great a departure from present practice. They argue local government employers and public employee organizations would have to cede a large part of their autonomy in public labor-management relations. The obstacles to creating metropolitan government and to achieving cooperation among existing governments in urban areas, so the critics contend, all stand in the way of efforts to establish an effective regional discussion process. They point out that wide differences between central city and suburban personnel systems, tax bases, and service levels are too great to overcome, at least for the present.

The difficulties which lie in the path of cooperative action in metropolitan areas should not be minimized. Yet, the Commission believes the advantages of achieving more uniform labor conditions, conserving time and energy in discussions, and avoiding employee organizations playing off one municipality against another warrant giving increased attention to developing appropriate mechanisms for discussions on an interjurisdictional basis.

State and Federal Mandates

The imposition by higher levels of government of requirements relating to the salaries and wages, hours of work, working conditions, fringe benefits, and personnel qualifications of employees of lower levels has emerged as a touchy intergovernmental issue. With the enactment of over a score of public labor-management relations laws, state and, to a somewhat lesser extent, federal mandating of conditions of employment for personnel of lower levels may undermine the labor relations process and, in come cases, may severely restrict the range of subjects covered. In nearly all instances, mandating narrows the discretion of the lower level governmental employer and encourages lobbying rather than direct confrontations between employee organizations and management. Present practices need to be reexamined by the states, as well as by the federal government, in light of their effects on labor-management relations at the state and local levels.

Recommendation No. 15
Curbing State Mandating

The Commission urges the states to adopt a policy of keeping to a minimum the mandating of terms and conditions of local public employment which are most properly subject to discussion between employee and employers.[8]

In the past, most state mandating of the terms and conditions of local employment could be justified as an effort to upgrade the local public service. Mandatory educational and training requirements for professional and technical personnel in critical health and safety fields obviously are necessary. Licensing and certification requirements in practically all cases are also essential means of ensuring a reasonable level of competence in the administration of state-aided education and welfare programs.

Other reasons exist for state involvement in local personnel matters. Employee organizations - especially those representing teachers, policemen, and firemen - have been notably successful in securing passage of special state legislation requiring public employers to improve their benefits and working conditions. Lobbying at the state level, then, is substituted for control by local public employers over personnel matters affecting their employees.

Mandating also serves as a constraint on the development of a full-fledged labor-management relations process since various issues, in effect, are excluded from the range of possible discussion and agreement. In the short run, local employee organizations, particularly those with influence in the legislature, may favor state mandating. Yet, in the long run, the Commission is convinced that public employees as a whole can gain little from this approach since its goal of preferential treatment undermines an effective, government-wide labor-management relations system. From nearly any angle, local public employers and employee organizations have little but headaches to gain from continuance of this state practice.

The Commission believes state mandating of local personnel standards - with the exception of professional and licensing requirements - violates the principles of constitutional and statutory home rule. This practice interferes with the ability of local jurisdictions to establish effective systems of personnel management and to develop viable and equitable relationships with their employees.

The Commission supports the principle that basic responsibility for local personnel management and salary determination should rest with local governing bodies. Certain mandated programs exist, however, which in our opinion assist in improving the local public service on a statewide basis. In several states, for example, local public employees are covered by a single state established retirement system. Consolidation of small local systems in most of these states was required because they were fiscally unsound. Furthermore, it is entirely appropriate for states to mandate training programs, stipulate standards for the licensing or certification of certain personnel categories, and establish minimum working conditions for professional and technical personnel in critical health and safety fields.

At the same time, the Commission opposes continuing any indiscriminate state mandating of the terms and conditions of local public employment. Such a policy does little or nothing by way of promoting the basic goals of a state labor-management relations policy. It encourages employee organizations to make "legislative end runs" when the parties are unable to reach agreement, and this violates the spirit, if not the letter, of the "in good faith" ethic. Mandating also can be fiscally irresponsible if the enactment of state legislation benefiting certain local employees is not accompanied by provision of state funds or authorization of additional revenue sources in order to meet the increased costs. Finally, such a state policy usually does little to help local personnel across the board; instead, individual occupations are given preferential treatment and this can sow the seeds of labor unrest.

Recommendation No. 16
No Further Federal Mandating

The Commission recommends that Congress desist from any further mandating of requirements affecting the working conditions of employees of state and local governments or the authority of such jurisdictions to deal freely or to refrain from dealing with their respective personnel.[9]

Like state mandating of personnel requirements for local government employees, free-wheeling federal mandating of conditions of employment for state and local personnel also may undermine effective labor-management relations at these levels. Congress, through the Fair Labor Standards Act of 1966, the proposed amendments to the Civil Rights Act of 1964, and the merit system requirements in grant-in-aid legislation, and the Executive Branch, through regulations implementing these and other provisions in certain federally aided programs, have imposed personnel requirements on local governments which may restrict the scope of discussions or collective bargaining between public employees and employers.

The 1966 amendments to the Fair Labor Standards Act extended the requirement that employers must pay employees engaged in interstate commerce a specified minimum hourly wage and a higher rate for work exceeding a certain maximum number of hours a week to cover public and private profit or nonprofit making hospitals, schools, higher educational instutions, and special training and rehabilitative institutions. Congress also expanded the definition of employer to include states and their political subdivisions. As a consequence, over one-half of the states joined with Maryland in bringing action against the Secretary of Labor to enjoin enforcement of the Act's provisions applying to state and local operated schools and hospitals. The plaintiff's failure to secure an injunction has raised serious questions concerning the extent to which the federal government under the commerce power can and should mandate internal personnel policies of state and local governments. In particular, the degree to which the regulated activities relate to interstate commerce and the distinction between the governmental and proprietary functions of a state have been focal points of this controversy.

Elimination of discrimination in public employment is a possible future form of federal mandating. The tremendous recent growth of public employee rolls has been accompanied by significant increases in the number of minority group workers. The recently released report by the U.S. Commission on Civil Rights, entitled For All the People . . . By All the People, demonstrates, however, that members of minority groups do not enjoy equal access to employment in state and local governments. As a result, the Civil Rights Commission has called upon Congress to extend the coverage of the Civil Rights Act of 1964 to protect minority group members from discrimination in the employment practices of states and localities.

Other possible bases for future mandating exist. One kind of further intervention might be justified on grounds that the personnel involved are vital to the implementation of critical, federally aided programs. Another rationale would be that the employees affected perform functions which in no major respect differ from those of private sector workers. Still another argument could be that the personnel involved are working for agencies or institutions operated by state or local governments acting in proprietorial capacity.

Having assessed these various facets of present and potential federal mandating and recognizing that further intervention is quite possible, the Commission adopts the general position that Congress should refrain from any additional mandating of requirements relating to the working conditions of state and local employees or the authority of these governments to deal with their personnel in whatever fashion they see fit.

The Commission accepts the judgment of the Supreme Court in upholding extension of the Fair Labor Standards Act to certain education and hospital employees of state and local governments. The fact that the extension covered the same occupational categories in both the private and public sectors, coupled with the widespread state and local acceptance of this decision, suggests that any other course of action at this time would be unwise, if not foolish.

At the same time, the Administration and Congress should abstain from any further mandating of requirements affecting the working conditions of state and local personnel, either by additional amendments of the Fair Labor Standards Act or by other statutory routes. The arguments for the Commission's position here parallel those developed by Mr. Justice Douglas in his dissent to Maryland v. Wirtz. Intrusions of the kind involving extension of the Fair Labor Standards Act tend to blur even more the already hazy distinction between interstate and intrastate commerce and to compromise severely the police powers of the states. Moreover, any additional mandating of salaries, wages, and working conditions can only be interpreted as an unconscionable federal reordering of the fiscal priorities of state and local governments. If such an action were to be taken, then Congress in all fairness should simultaneously enact legislation providing the funds required for adherence to the standards stipulated.

In a like fashion, the Commission opposes any federal effort to mandate a collective bargaining, meet and confer, or any other labor-relations system for the employees of state and local jurisdictions or for any sector thereof. Little would be left of the federal principle of divided powers were such legislation enacted. No interpretation of the commerce power, of the state as proprietor, or of the "general welfare" clause can, in our opinion, serve as a legitimate constitutional basis for this kind of drastic infringement on the basic authority of the states and localities as governments in a federal system.

A major contemporary example of this form of possible usurpation is the "Professional Negotiations Act for Public Education" (S. 1951), introduced by Senator Metcalf of Montana in April 1969. This bill would establish an impartial Professional Education Employee Relations Commission (PEERC) within the Department of Health, Education, and Welfare to settle disputes involving teacher organizations and boards of education in public school systems operating under state laws. Based on the position that teacher-school board relations affect interstate commerce, the proposed Act recognizes the rights of professional employees of school boards to membership in employee organizations and to representation by such organizations in negotiations over the terms and conditions of employment culminating in a written agreement. The PEERC could petition any federal district court to enjoin unlawful acts - such as refusal by boards of education to negotiate in good faith. With respect to dispute settlement procedures, either party, or PEERC on its own volition, could declare an impasse in negotiations and the Commission then could appoint a mediator, who would serve without cost to the parties. The parties also could establish their own mediation procedure. If mediation is unsuccessful after 15 days have passed, either party could request submission of the dispute to advisory - or, if mutually agreed upon, to binding - arbitration, and an arbitrator could be appointed by either PEERC or the parties themselves. All arbitration expenses would be shared equally by the parties. The arbitrator's findings and recommendations would be made public if an agreement was not reached within 10 days following their presentation to the parties. Another key provision of this bill would repeal all strike bans on professional employees in the public sector, although work stoppages could be enjoined if they presented a clear and present danger to public health or safety, or if the employees' representative failed to make a reasonable attempt to use the impasse resolution procedures contained in the Act. The only exceptions to the applicability of S. 1951 would be state laws which PEERC determines to be substantially equivalent to the system of teacher-school board relations prescribed by the Act.

This legislation is based on the tenuous position that teacher-school board relations are proper matters for federal regulation because they affect interstate commerce. The Commission does not agree with the sponsors of this bill that the failure of some boards of education to accord teachers full associational freedom and collective discussion rights has placed substantial burdens on the flow of commerce, at least to the extent of justifying federal preemption of this important area of state and local activity. As a matter of fact, at least 24 states have enacted either comprehensive labor relations statutes or special laws dealing with labor-management relations in public education. It would be ironic, to say the least, to mandate in federal legislation negotiating procedures and employee rights for the teaching sector of the state and local public service when such rights have not been accorded to any employed by the federal government. Federal statutory requirements providing for across-the-board collective negotiations between public school teachers and boards of education, establishing federal dispute settlement machinery, and removing strike bans - regardless of the provisions of state public labor-management relations legislation or local laws and policies - not only would disrupt the public education system at the state and local levels; they would seriously undermine the viability of the federal system. In the absence of overwhelming evidence of the unwillingness or inability of state and local governments to act, the federal government should refrain from preemptive action. Such evidence clearly is lacking at present. States and localities have developed and are developing their own response to the challenge of employee militancy, especially teacher militancy. Given the nature of this challenge, experimentation and flexibility are needed, not a standardized, federal, preemptive approach.

To sum up, effective public employee-employer relations at the state and local levels can only emerge from an unfettered process involving, basically, the employers, employees, and their representatives as well as the electorates of the various jurisdictions. The federal government clearly has an interest in the development of stable and equitable labor-management relations at the other levels. This interest can be best served, however, by avoiding actions that would exacerbate these relations and by focusing on ways and means of directly encouraging the establishment of strong, innovative personnel systems, as in the case of the proposed Intergovernmental Personnel Act of 1969 (S. 11, 91st Congress).

Concluding Observations

The major recommendations in this report provide the essentials of a realistic, non-rhetorical approach to a new look at public labor-management relations in the state and local public service. Moreover, this approach is suitable in most instances for a majority of the states and their localities.

Its realism is reflected clearly in the stress placed on the distinctive features of public employment - the strike ban, the reliance on impasse procedures, the question of essential services, the role of public opinion and politics, and the impact of merit principles and systems.

Its non-rhetorical tone is reflected in the absence of traditional terms, procedures, and references drawn from private sector collective bargaining, which when applied to the public sector become mythical and misleading. Logic does not support, for example, the claim that private and public sector collective bargaining are similar, when strikes universally are outlawed in the latter. It is self-deluding to place a private sector contract in the same category as a binding agreement in the public sector, given the fragmented approval authority of most public employers. The approach proposed by the Commission in this report avoids these illusions and the false hopes they generate.

Finally, the Commission's proposals comprise a reform program that recognizes basic employee rights, penalizes obstructionist employers, grants a preferred position to majority organizations, and establishes clear criteria for meeting and conferring "in good faith."

These criteria lay down basic ground rules for a candid dialogue and seek to extend even-handed treatment to both parties at the bargaining table.

The approach proposed obviously goes well beyond most of the existing meet and confer statutes by avoiding the one-sidedness of these laws. On the other hand, unlike certain collective bargaining legislation, it stops short of prescribing an employer-employee relations system which ignores the hard realities of political, governmental, and public life. It is, then, a mean between these existing statutory extremes. As such, it strikes a balance between the public interest and employee interests, between management needs and the concerns of the majority representative, between political realism and procedural innovation. The Advisory Commission on Intergovernmental Relations commends this approach and this system to legislators, labor leaders, and public managers as they strive to reconcile these vital goals and seek a more stable, more salutory system of public labor-management relations to meet the severe challenge of the 1970's and beyond.

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[1] Mayor Lugar dissents from this recommendation and states: "I feel that public labor relations laws should recognize as a general principle that supervisory employees should have certain opportunities to organize because of the wide variety of public employers within a state and the diversity of their supervisory personnel structures. In the public sector, many supervisors and professional workers -- such as teachers, police, firemen, and social workers -- now have and exercise a strong community of interest with the rank and file workers they supervise. To ignore or to attempt to eliminate this relationship would be difficult and potentially disruptive in the sphere of public labor relations."

[2] The term "confidential employee" refers to one whose functional responsibilities or knowledge in connection with the public labor-management issues involved in the meet and confer in good faith process would make his membership in the same organization as rank-and-file employees incompatible with his official duties.

[3] Additional views of State Senator Arrington, Congressman Fountain, State Senator Knowles, County Executive Michaelian, and Supervisor Roos: "We feel this recommendation does not go far enough. To deter public employee work stoppages, state public employee relations statutes should provide penalties for violation of no-strike provisions."

[3] State Senator Knowles, County Executive Michaelian, and Governor Shafer dissent from this recommendation and state: "We believe the Commission did not give adequate consideration to the fact that a large majority of states enacting public employee labor relations laws in the last decade have turned to the collective negotiations approach. While not opposing the meet and confer concept, we do not believe it goes far enough toward effecting a meaningful and enlightened personnel policy. It is our view that public labor-management relations should be based more on the mutual determination of the terms and conditions of public employment by management and employee organizations, with equal protection ensured by the law for both parties to the negotiating process."

[5] Senator Muskie joins with Senator Knowles, County Executive Michaelian, and Governor Shafer in their dissent and states:

"On such a vital matter of policy as in the case of labor-management relations in the public service, the recommendations of the Advisory Commission should reflect more than the belief that they strike a happy medium between the rights of employee organizations on the one hand and public managements' need for greater discretion than that given its private counterpart on the other.

Such recommendations will bear heavily on the evolution of public policy in this area. Hence, they should clearly come to grips with the basic issues to be resolved. It is questionable whether recommended adoption of a 'meet and confer' approach to such negotiations is sufficient to meet the requirements of effective public policy dealt with by the report. Nor is it clear that the "meet and confer" concept is part of a normal progression toward that requirement.

For these reasons, I must enter my dissent from the central recommendation adopted by those who attended the September 19 Commission meeting."

[6] Budget Director Mayo takes exception to this recommendation and states: "While I do not wish to dissent this recommendation, it seems to me that the 'meet and confer' approach, when taken in the context of the other recommendations will be unsatisfactory if continued for more than a very short time."

"The present state of labor-management relations at all levels of government clearly indicates the need for a definitive structure authorized by legislation which will clarify the role and responsibility of both management and employee organizations. In most public jurisdictions legislation controls wages, hours of work, and major supplemental benefits, thus sharply restricting the areas available for collective bargaining. Nevertheless, there is room for, and great benefit to be derived from formal negotiations about such matters as: (a) focus and extent of recognition of employee organizations; (b) agreements on working conditions; (c) resolution of negotiation impasses; and (d) agreements with respect to handling appeals from adverse personnel actions and employee grievances. On the basis of federal experience, prompt movement toward authorization for collective negotiations seems both desirable and sound public policy."

[7] Governor Rockefeller dissents from this recommendation and states: "It is recognized that individual circumstances in some states and their outlook as to how they desire to ex-

tend to public employees a role in arriving at terms and conditions of employment may call for an approach somewhat short of collective negotiations. However, a growing number of states are turning toward 'collective negotiations.' In my judgment the Commission's preference should be the 'collective negotiations' approach, while offering 'meet and confer in good faith' as an alternative to those states which felt that they were not quite prepared to move into collective negotiations immediately."

[8] Mayor Walsh dissents from this recommendation and states: "I am opposed in principle to any state mandating which imposes increased costs on local government unless the state assumes the total cost of such increases."

[9] Additional view of State Senator Arrington: "While I do not oppose this recommendation, I do not feel it has a place in a report which deals with the public employee relations of state and local governments."

8

Proposed National Public Employee Relations Act

Following is a proposed federal law prepared by the American Federation of State, County, and Municipal Employees. This model legislation is AFSCME's recommendation for a needed comprehensive bargaining law covering state, county and municipal employees. It was introduced in Congress this past spring as H.R. 17383 by Representative Jacob H. Gilber (D-N.Y.).

This model legislation is being distributed by ENS because many AFSCME affiliates now represent school board employees in collective bargaining.

NATIONAL PUBLIC EMPLOYEE RELATIONS ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the National Public Employee Relations Act, 1970.

SECTION 1. Policy

It is the declared policy of the United States that public employees be afforded the rights to which all employees working in a free, democratic society are entitled.

The denial by some public employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining, deprives public employees of the effective exercise of rights guaranteed under the Constitution of the United States. Such refusal also leads to strikes and other forms of strife and unrest, with the consequent effect of obstructing the flow of commerce, denying the right of Citizens of the United States to exercise rights protected by the Constitution thereof, and interferes with the normal and necessary operations of government.

Experience in private and public employment has proved that protection by law of the right of employees to organize and bargain collectively safeguards the public and commerce from injury, impairment or interruption, including interruption of commerce among the states and safeguards rights guaranteed by the United States Constitution; and promotes the flow of commerce by removing certain recognized sources of strife and unrest. Protection of these employee rights encourages practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours or other working conditions, and restores equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce among the states, to protect the effective exercise of rights guaranteed by the United States Constitution, and to mitigate and eliminate these obstructions when they occur by encouraging the practice and procedure of collective bargaining and by protecting the exercise by public employees of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SECTION 2. Definitions

When used in this Act.

(1) "person" includes one or more individuals, labor organizations, employees, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(2) "employer" means any State or any political sub-division thereof, including, without limitation, any town, city, county, borough, district, school board, board of regents, social service or welfare agency, public and quasi-public corporation, housing authority or other authority or public agency established by law, and any person or persons designated by the employer to act in its interest in dealing with employees;

(3) "employee" means any employee of an employer, and shall not be limited to the employees of a particular employer, and shall include any employee of an employer, whether or not in the classified service of the employer, except officials appointed or elected pursuant to a statute to a policy-making position, and shall include any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;

(4) "labor organization" means any organization of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment;

(5) "Commission" means the National Public Employee Relations Commission provided for in Section 9 of this Act;

(6) "exclusive representative" means the labor organization which has been (a) certified for the purposes of this Act by the Commission as the exclusive representative of the employees in an appropriate unit, or (b) recognized by an employer prior to the enactment of this Act as the exclusive representative of the employees in an appropriate unit.

(7) "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce;

(8) "unfair labor practice" means any unfair labor practice listed in Section 5;

(9) "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee;

(10) "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(11) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

SECTION 3. Rights of Employees

Employees shall have the right of self-organization, to form, join, or assist any labor organizations, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 5(a)(3).

SECTION 4. Union Dues Deduction and Authorization

The employer shall, on receipt of written authorization of an employee, deduct from the pay of such employee money in payment of membership dues in a labor organization, and shall remit such money to said labor organization; Provided, That if an exclusive representative has been designated, the employer may not entertain a written or oral authorization on behalf of any other labor organization from an employee in said bargaining unit; Provided further, That any such assignment shall be irrevocable for a period of not more than one year or beyond the termination date of the applicable collective agreement, whichever occurs sooner.

SECTION 5. Unfair Labor Practices

(a) It shall be an unfair labor practice for an employer--

(1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 3;

(2) to dominate, interfere or assist in the formation or administration of any labor organization, or contribute financial or other support to it; Provided, That subject to rules and regulations made and published by the Commission pursuant to section 9(j), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;

Provided, That nothing in this Act or in any other statute of the United States shall preclude an employer from making an agreement with an exclusive representative (not established, maintained or assisted by any action defined in Section 5(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein, on or after the thirtieth day following the beginning of such employment or on the effective date of such agreement, whichever is the later; Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition, or given any information or testimony under this Act;

(5) to refuse to bargain collectively in good faith with an exclusive representative.

(6) to fail to comply with any provision of this Act.

(b) It shall be an unfair labor practice for a labor organization or its agents

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 3 of this Act;

Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as condition of acquiring or retaining membership;

(3) to refuse to bargain collectively in good faith with an employer, provided it is the exclusive representative.

(c) For the purposes of this Act, to bargain collectively is the performance of the mutual obligation of the employer through its chief executive officer or his designee and the designees of the exclusive representative to meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. The duty to bargain includes the duty to negotiate about matters which are or may be the subject of a regulation promulgated by any employer's agency or other organ of a state or subdivision thereof or of a statute, ordinance, or other public law enacted by any state or subdivision thereof, and to submit any agreement reached on these matters to the appropriate legislature.

SECTION 6. Representatives and Elections

(a) Whenever, in accordance with such regulations as may be prescribed by the Commission, a petition has been filed

(1) by a labor organization alleging that 30 percent of the employees in an appropriate unit (A) wish to be represented for collective bargaining by an exclusive representative, or (B) assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit; or

(2) by the employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative of the majority of employees in the unit; or

(3) by an employee or group of employees alleging that 30 percent of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit, the Commission shall investigate such petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the Commission finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. The Commission may certify a labor organization as an exclusive representative if it determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practices. The Commission may also certify a labor organization, upon the joint request of the employer and such labor organization, if, after investigation, the Commission is satisfied that the labor organization represents an uncoerced majority of employees in an appropriate unit and, that such majority status was achieved without the benefit of unlawful employer assistance as defined in Section 5(a)(2).

(b) Only those labor organizations which have been designated by more than 10 percent of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election, in conformity with the rules and regulations of the Commission.

(c) In order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the Commission shall decide in each case the unit appropriate for the purposes of collective bargaining, and shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees; Provided, That, except in the cause of units of firefighters, supervisors shall not be placed in a bargaining unit which includes nonsupervisory employees; Provided, further, That a unit may be found to be the appropriate unit in a particular case, even though some other unit might also be appropriate, or might be more appropriate.

(d) An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding 12-month period, a valid election has been held. The Commission shall determine who is eligible to vote in the election and shall establish rules governing the election. In any election where none of the choices on the ballot receives a majority, but a majority of all votes cast are for representation by some labor organization, a runoff election shall be conducted. A labor organization which receives the majority of the votes cast in an election shall be certified by the Commission as the exclusive representative.

(e) The determination by the Commission that a labor organization has been chosen by a majority of the employees in an appropriate unit shall not be subject to Court review.

SECTION 7. Unfair Labor Practice Procedure

(a) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any unfair labor practice (listed in Section 5) affecting commerce, the Commission or any agent or agency designated by the Commission for such purposes, shall issue and cause to be served upon such person a copy of the complaint and a notice of hearing before the Commission or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint.

(1) Any such complaint may be amended by the complainant at any time prior to the issuance of an order based thereon: Provided, That the charged party is not unfairly prejudiced thereby.

The person so complained of shall be required to file an answer to the original or amended complaint. The complainant and the person charged shall be parties and shall have the right to appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the member, agent or agency conducting the hearing, or the Commission, any other interested person may be allowed to intervene in the said proceeding and to present testimony. In any hearing the Commission shall not be bound by the rules of evidence prevailing in the courts.

(2) The testimony taken by such member, agent or agency or the Commission shall be reduced to writing and filed with the Commission. Thereafter in its discretion the Commission upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Commission shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Commission shall state its findings of fact and shall issue and cause to be served on such person an order requiring that he cease and desist from these unfair labor practices, and take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act; Provided, That were an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him. Such order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

(3) If upon the preponderance of the testimony taken the Commission shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then it shall state its findings of fact and shall issue an order dismissing the said complaint. No notice of hearing shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. No order of the Commission shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Commission, or before an examiner, or examiners, thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with recommended order, which shall be filed with the Commission, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Commission may authorize, such recommend order shall become the order of the Commission and become effective as therein prescribed.

(4) If exceptions are filed to the proposed report, the Commission shall determine whether such exceptions raise substatial issues of fact or law, and shall grant review if it believes substantial issues have been raised. If the Commission determines that the exceptions do not raise substantial issues of fact or law, it may refuse to grant review, and the recommended order shall become the order of the Commission, and become effective as therein prescribed.

(b) The Commission shall have power, upon issuance of a complaint as provided in subsection (a) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Commission such temporary relief or restraining order as it deems just and proper.

(c) Until the record in a case has been filed in a court, as hereinafter provided, the Commission may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) The Commission or the complaining party shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred, or wherein such charged person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order and shall file in the Court the record in the proceedings as provided in Sec. 2112 of

Title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief or permanent relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, enforcing as modified, or setting aside in whole or part the order of the Commission.

(e) No objection that has not been urged before the Commission, its member, or agent or agency shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(f) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member or agent or agency, the court may order such additional evidence to be taken before the Commission, its member or agent or agency, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the United States Supreme Court upon writ of certiorari or certification as provided in accordance with Section 1254 of Title 28.

(g) Any person aggrieved by a final order of the Commission granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, as set forth in sub-section (d) above, within sixty days, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted to the Commission and thereupon, the aggrieved party shall file in the court the record in the proceeding, certified by the Commission as provided in Section 2112 of Title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as under sub-section (d), and shall grant such temporary relief or restraining order as it deems just and proper, and in like manner make and enter a decree enforcing, modifying, enforcing as modified, or setting aside in whole or in part the order of the Commission; the findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive, and the certification by the Commission that a labor organization is the exclusive representative shall not be subject to review by the Court.

(h) The commencement of proceedings under subsection (d) or (g) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(i) In any proceeding for enforcement or review, of a Commission order held pursuant to section 7(d) or (g), evidence adduced during the representation proceeding pursuant to section 6 shall not be included in the transcript of the record required to be filed under section 7(d) or (g); nor shall the court consider the record of such proceeding.

(j) Petitions filed under this Act shall be heard expeditiously, and, if possible, within 60 days after they have been docketed, by the court to which presented, and shall take precedence over all other civil matters except earlier matters of the same character.

(k) In the event no petition to review of enforce the order of the Commission is filed within 60 days from the date of the Commission's order pursuant to Section 7(d) or (g), the order shall be final and no review thereof may be had. The Commission shall thereupon file a petition with the Court to enforce the order.

SECTION 8. Written Agreements; Appropriations To Implement; Enforcement

A collective bargaining agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements. Said agreement shall be valid and enforced by its terms when entered into in accordance with the provisions of this Act.

(a) Suits for violation of contracts between an employer and a labor organization may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization and any employer shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoenas, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

SECTION 9. National Public Employee Relations Commission

(a) There is hereby created the National Public Employee Relations Commission, which shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. The members shall not engage in any other business, vocation or employment. Each of the original members of the Commission shall be appointed for different terms, of one, two, three, four and five years, but their successors shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member to serve as Chairman of the Commission. Any member of the Commission may be removed by the President, upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the office of any member shall not impair the right of the remaining members to exercise all the powers of the Commission, provided, however, that three members shall at all times constitute a quorum of the Commission. A vacancy shall be filled in the same manner as herein provided for appointment.

(c) The Commission may hire employees whom it may find necessary for the proper performance of its duties.

(d) The Commission is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise, in which case, two members shall constitute a quorum. The Commission is also authorized to delegate to its regional directors its powers under Section 6 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election, conduct a secret ballot election, and certify the results thereof, except that upon filing of a request therefore with the Commission by any interested person, the Commission may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Commission, operate as a stay of any action taken by the regional director. The Commission is also authorized to delegate to a Trial Examiner its powers under Section 7 hereof to determine whether any person has engaged in an unfair labor practice. In the event the Commission exercises the power conferred by this subsection (d) to delegate its powers to a Trial Examiner or regional director, it may, upon application made to it, review, and upon such review, modify, affirm, or reverse, the decision, certification, or order or its Trial Examiner or regional director, as the case may be. In the event that the Commission does not undertake to grant review within 30 days after a request for review is filed, the decision of the regional director or Trial Examiner shall become the decision of the Commission.

(e) The Commission shall at the close of each fiscal year make a report in writing to Congress and to the President stating the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Commission, and an account of all moneys it has disbursed.

(f) There shall be a General Counsel of the Commission who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. He shall be authorized to investigate alleged violations of the Act, to file and prosecute complaints, and to intervene before the Commission in appropriate unfair labor practice proceedings, in accordance with Section 7. The General Counsel shall exercise such other powers as the Commission may prescribe. In case of a vacancy in the office of the General Counsel, the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than 40 days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

(g) All of the expenses of the Commission, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Commission under its orders, shall be allowed and paid on the presentation of itemized vouchers therefore approved by the Commission or by a designated individual.

(h) The principal office of the Commission shall be in the District of Columbia, but it may meet and exercise any of all or its powers at any other place. The Commission may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Commission in the same case.

(i) For the purpose of all hearings and investigations, which, in the opinion of the Commission, are necessary and proper for the exercise of the powers vested in it by section 7 and section 9 --

(1) The Commission, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence in the possession or control of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Commission, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Commission to revoke and the Commission shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any person may appeal the Commission's revocation of a subpoena to any district court of the United States or the U.S. courts of any territory or possession, or the District Court of the U.S. for the District of Columbia, within the jurisdiction of which the inquiry is carried on. Any member of the Commission, or any agent or agency designated by the Commission for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission or any party to a proceeding hereunder shall have jurisdiction to issue to such person an order requiring such person to appea before the Commission, its member, agent or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty of forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transation, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Commission, its member, agent or agency may be served either personally or be registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Commission, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of employers shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any matter before the Commission.

(7) Any person who shall willfully resist, prevent, impede, or interfere with any member of the Commission or any of its agents or agencies in the performance of duties pursuant to this Act shall, upon conviction, be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

(j) The Commission shall adopt, promulgate, amend or rescind such rules and regulations as it deems necessary and administratively feasible to carry out the provisions of this Act. Public hearings shall be held by the Commission on any proposed rules or regulations of general applicability designed to implement, interpret or prescribe policy, procedure or practice requirements under the provisions of this Act and on any proposed change to such existing rule or regulation. Reasonable notice shall be given prior to such hearings, which shall include time, place and nature of such hearing and also the terms or substance of the proposed rule or regulation.

SECTION 10. Mediation and Factfinding

(a) The party desiring to modify or terminate a collective bargaining agreement, or otherwise modify terms and conditions of employment, shall notify the other party and the Federal Mediation and Conciliation Service, hereinafter called "Service", 60 days prior to the time it is proposed to make such modification.

The Service shall assign a mediator upon request of either party or upon its own motion.

(b) If upon expiration of an existing collective bargaining agreement, or 30 days following certification of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the Service to initiate factfinding. If no request for factfinding is made by either party prior to the expiration of the agreement, or 30 days following certification of an exclusive representative, the Service may initiate factfinding, as provided for in subsection (c) hereof.

(c) Within three days of receipt of such petition, or on its own motion, the Service shall submit to the parties a list of seven qualified, disinterested persons, from which list each party shall alternately strike three names, with the order of striking determined by lot, and the remaining person shall be designated "factfinder". This process shall be completed within five days of receipt of this list. The parties shall notify the Service of the designated factfinder.

(d) The factfinder shall immediately establish dates and place of hearings. Upon request of either party or the factfinder, the Service shall issue subpoenas. The factfinder may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the issues in dispute. Upon completion of the hearings, but no later than twenty days from the date of appointment, the factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the employer and the exclusive representative. The factfinder may make this report public five days after it has been submitted to the parties. If the dispute is not resolved fifteen days after the report is submitted to the parties, the report shall be made public. The parties shall continue the status quo for a period of 60 days from the date either party requests factfinding or the Service initiates fact finding on its own motion. During this 60-day period, in order to permit the successful resolution of the dispute, the employer may not unilaterally change any terms or conditions of employment, and the employees shall not engage in a strike.

(e) The employer and the exclusive representative shall be the only parties to factfinding proceedings.

(f) Nothing in this section shall be construed to prohibit the factfinder from endeavoring to mediate or resolve the dispute, or from prohibiting the parties to substitute for these purposes any other governmental or other agency or party in lieu of the Service.

(g) Nothing in this section shall be construed to prohibit the parties from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached said arbitration shall supersede the factfinding procedures set forth in this Section.

SECTION 11. Effective State or Local Laws

This Act shall be the exclusive method for regulating the relationship between employers and the employees in regard to all matters covered herein; Provided, That if any of the several states or political subdivisions or any territory or possession of the United States shall by law establish a system for regulating the relationship between employers and their employees which is substantially equivalent to the system established by this Act, said state, or political subdivision, territory or possession is substantially equivalent to the system established herein, it shall grant the requested exemption, to take effect on a date fixed by the Commission.

SECTION 12. Severability

If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 13. Act Takes Precedence

This Act shall supersede all previous statutes concerning this subject matter and shall preempt all contrary local ordinances, executive orders, legislation, rules or regulations adopted by any State or any of its political subdivisions or agents such as a personnel board or civil service commission.

SECTION 14. Effective Date and Termination

This Act shall be effective ___________ ___________ (immediately upon enactment or appropriate date).

9

NEA's Proposed Bill of Teacher Rights

INTRODUCTION

By George D. Fischer, President, NEA
At 1970 Convention

At our convention last year, I proposed the writing of the Bill of Teacher Rights. At this convention, I am happy to submit to you the first draft of a proposed Bill of Teacher Rights.

A considerable effort has gone into this draft. More than 400 statements of rights have been secured, studied and incorporated into this document. It now needs the critical review by you, the teachers of America.

Distribution of the first draft and an open hearing take place at this convention. No official action will be requested.

The document will undergo continuing refinement during the summer. Next fall it will be sent to all state and local associations for critical analysis. A national workshop will be held next spring and a second draft will be submitted to delegates at the 1971 convention.

This work is being done under the supervision of a working committee appointed by the Commission on Professional Rights and Responsibilities. The committee is chaired by Mr. Lewis T. Clohan, California. Serving on the committee are Mr. Hudson L. Barksdale, South Carolina, Miss Muriel Kendrick, New Hampshire, Mr. Joseph Wilson Westbrook, Tennessee and Mr. Dick Vander Woude, Nevada. Mr. William P. Haubner, Senior Staff Associate and Charlotte B. Hallam, Staff Associate, PR & R, are staff contacts for the committee.

This first draft is the initial effort to enumerate the unspoken and often unknown; to codify that which may not yet exist in legislation or statutes; to declare for teachers rights and privileges which have long been reserved to government bodies or their authorized agents. The Bill of Teacher Rights ultimately will establish the rights of all teachers at all educational levels.

This bill must be a major instrument in forever dispelling the denial of teacher rights. All engaged in the educational processes must be made aware of the rights of the other teacher. Governmental authorities and school administrators must not, either through accident or design, abridge or deny these rights. Parents and citizens must not, through economic or political pressure, self interest or prejudice, abridge or deny the rights of teachers. And lastly, teachers must not, through ignorance or fear, acquiesce when their rights are abridged, abrogated or denied.

Just as the Bill of Rights was added to the Constitution of the United States to further protect all citizens, we will write this Bill of Teacher Rights to prevent arbitrary, capricious, discriminatory, unfair or inequitable acts against teachers regardless of the source. Only through personal freedom can we hope to attain the academic and intellectual freedom which is our inheritance as citizens in a democratic system. To teach freedom, teachers must be truly free to teach. To learn freedom, students must be truly free to learn.

OVERVIEW

A bill is defined as a written document. A right is interpreted as something that one may properly claim as due. The Bill of Teacher Rights will be a promulgation of that to which all teachers are entitled and what no just person should refuse or deny.

The Bill will provide standards which may be adopted in legislation, negotiated agreements or in any other documents which would designate prohibited acts and provide for the ready identification of violations of teacher rights.

PREAMBLE

The teachers of the United States of America, ever aware that the general welfare of a free society is dependent upon the education afforded its citizens, affirm that the right of the student to learn is paramount in the advancement of society.

In order to promote intellectual freedom, to fully encourage the pursuit of truth and knowledge, to provide a climate to develop methods of acting as a consequence of thinking, to develop and preserve respect for the worth and dignity of man, we further affirm that teachers must be free to contribute full to the evolution of the process and the environment which encourages and promotes the freedom to teach and the freedom to learn.

The teacher recognizes this unique leadership role and responsibility to promote an educational community which reflects values and principles contributive to improving the quality of education in the United States today.

Believing that teachers who teach free citizens must likewise be free in all aspects of their life and being desirous of enunciating these principles and rights and the fundamental freedoms derived from them in a Bill of Rights, we do hereby declare the following rights for all persons engaged in the teaching profession.

The enumeration herein of certain rights shall not be construed to deny or disparage other rights retained or accruing to teachers, and references to specific situations are intended as illustrative and not by way of limitation.

ARTICLE I

RIGHTS AS AN INDIVIDUAL AND CITIZEN

As a person engaged in the profession that depends upon freedom to assure quality teaching and learning, the teacher must be free to fully exercise rights as an individual and as a citizen. In the exercise of all rights, privileges or immunities, the teacher must be free publicly and privately from constraints that are not imposed on other individuals or citizens.

As an individual the teacher must be free to exercise those fundamental rights accorded to all persons. Such rights include dignity, life, liberty and the pursuit of happiness.

As a citizen the teacher enjoys those rights created and protected in the various consitutions and laws. Teachers cannot be denied their rights solely because they are public employees.

The teacher enjoys the same rights as does every other person in society, without a showing that the exercise of individual and citizenship rights has a demonstrably detrimental effect on the education process.

As a member of a profession encouraging the full development of the person as an individual and as a citizen, the teacher must be afforded every opportunity outside the academic setting to maintain dignity, privacy, self-respect, full self-development and all rights of citizenship.

In this respect, the teacher has the right to -

SECTION 1. Exercise religious freedom in thought and expression, subject to no dictation from outside the mind of the holder, being at all times his spokesman.

SECTION 2. Exercise all rights of citizenship including: political freedom in thought and expression, registering and voting, performing jury duty, participating in party organization, campaigning for candidates, contributing to campaigns of can-candidates, lobbying and organizing political action groups, and running for and serving in public office in the absence of an overriding conflict of interest.

SECTION 3. Advocate, seek and actively participate in the identification and solution of social and economic problems.

SECTION 4. Forcefully and publicly dissent, criticize, and to express, communicate, and advocate change.

SECTION 5. Be free to read, write, discuss and advance any beliefs individually or in association with others.

SECTION 6. Be in a minority and to collectively oppose the majority by expressing and espousing unpopular causes and conclusions whether they be right or wrong.

SECTION 7. Have equal protection of all laws free from discrimination or any basis, including race, color, creed, age, sex, marital status, religion, political, national or social origin, or economic condititition.

SECTION 8. Have equal opportunity and fair treatment in all matters as accorded all other similarly situated persons.

SECTION 9. Be free in his employment from punitive actions based upon private, personal conduct unless there is a showing of an adverse effect such conduct has upon the educational process.

SECTION 10. Be afforded a decent standard of living for himself and his family commensurate with his background, training and experience.

ARTICLE II

RIGHTS AS A PROFESSIONAL

The teacher as a member of a profession possesses special knowledge and ability for providing the fullest possible educational opportunity relevant to the student and society. The full application of his special knowledge within his profession and the exercise of methods which contribute to the intellectual interests of the student further the objectives of education. He is a person obligated by ethical responsibilities to those he teaches, to the public and to his colleagues. To protect society, the teacher's academic freedom must be guaranteed, for its absence restricts the freedom of the people to learn. Accordingly, the teacher in the academic setting must be free from unreasonable coercion in his expression of knowledge and ideas and must be free from judgements of his professional competency by persons other than qualified and obligated professionals.

The freedom to learn requires vigorous, bold and independent thought in the search for truth and knowledge. Freedom in the educational setting is dependent on all the rights accorded the teacher in every aspect of his life.

The freedom to teach requires the time to teach and an appropriate place to teach. It gives the teacher the right to be free from non-professional duties which are not reasonably related to teaching responsibilities or which unreasonably interfere with his capacity to perform professionally. It gives him the right to be provided with appropriate learning materials, supervisory and administrative assistance, equipment and facilities.

In the performance of the duties and functions of teaching, the teacher has the right to -

SECTION 1. Exercise all of his rights within the educational system as long as the exercise does not have an adverse effect on the learning process or the health and welfare of the student.

SECTION 2. Be free from coercion, intimidation or repression except when his conduct violates accepted standards of professional ethics and competency.

SECTION 3. Advise the public of his judgment of matters affecting the educational process.

SECTION 4. Attend and be afforded access to the minutes of any meeting of any public body at which official action is to be taken which affects the educational process.

SECTION 5. Present and interpret information within his area of competency and to evaluate and criticize ideas presented in any textbook or other materials.

SECTION 6. Have access to any knowledge and to translate and transfer these findings and teachings into learning situations within his area of assignment.

SECTION 7. Teach controversial issues within his area of assignment presenting differing points of view, including his own.

SECTION 8. Encourage critical thinking by presenting and discussing any opinion or conclusion, distinguishing among those based on theory, evidence, conjecture, widely-accepted ideas, emotional adherence, prejudicial acceptance or any other forms of support.

SECTION 9. Be considered for employment solely on the basis of educational and professional criteria.

SECTION 10. Teach in a system which has financial support sufficient to provide quality education for all students.

SECTION 11. Have safeguards, facilities, and conditions which protect the life and property of those involved in the teaching environment.

SECTION 12. Make an effective contribution to the solution of professional problems: including participation in the research, development and adoption of new courses, textbooks, teaching aids and methods of instruction, and participation in the planning of new schools.

SECTION 13. Obtain copyrights or patents on publications, materials, teaching aids, instruments, processes, or methods he has developed or discovered, when their utilization is contemplated outside contractual responsibilities.

SECTION 14. Keep professional skills up-to-date.

SECTION 15. Have his competency evaluated based upon professional standards as defined, established and accepted with the participation of the teacher or his representative.

SECTION 16. Have access to any written evaluations of his competency or performance and the right to appeal from any evaluation to a clearly designated impartial agency.

SECTION 17. Have documents placed in his personnel file to rebut any negative evaluations of his performance in a professional capacity.

SECTION 18. Have access to all items in his personnel file except privileged communications related to his initial employment, and to have removed from his personnel file any letters or other documents which cast doubt upon his performance as a teacher upon determination that such letters or documents are without foundation.

SECTION 19. Be advised, in writing, of all the particulars of any complaint against him which might affect him or his teaching status.

SECTION 20. Decline, without penalty, any participation in an evaluation of his personality requiring submission to a psychiatric or psychological examination, in the absence of substantial evidence showing the necessity for such examination.

SECTION 21. Refuse to reveal evaluative or other confidential information about students to any person within the school system who will not use such information for professional purposes or for purposes consistent with the best interests of the student involved; and to refuse to give access to any student records to any person outside the school system without written permission from the student and his parents.

SECTION 22. Secure students' opinions of and participation in academic planning and evaluation.

SECTION 23. Refrain from recording or disclosing students's political, social or religious activities or attitudes.

SECTION 24. Use any reasonable means to maintain discipline.

SECTION 25. Exclude a student when his behavior is such as to seriously disrupt the learning process.

SECTION 26. Use any reasonable force to protect the health and safety of himself or others.

SECTION. 27. Refuse his services under conditions or terms which interfere with or impair the free and complete exercise of his professional judgment and skill or which have a harmful effect on the learning process, health or welfare of his students.

ARTICLE III

RIGHTS AS AN EMPLOYEE

Conditions which interfere with efficient teaching and learning can be avoided or substantially minimized when all interested parties recognize the legitimate rights of teachers in their relations with the employing agency. Following his entrance into the profession, the teacher has the right to the expectancy of continuing employment in the absence of a showing of good cause for his dismissal or nonrenewal. The conditions and terms of employment should be no less than the same rights, considerations, and privileges as are accorded all other equally qualified and situated employees.

The public interest and quality education require high standards of teaching performance and the continuous development and implementation of modern and progressive work practices and conditions. Excellence of performance is obtained from teachers who have been provided a working environment conducive to the maintenance of constructive and cooperative relationship between employing agencies and teachers acting individually or collectively.

Such employment rights as are accorded the teacher promote the aims of education.

As an employee the teacher has the right to -

SECTION 1. Choose, seek and accept work commensurate with his qualifications and ability without regard to his race, color, creed, marital status, sex, age, religion, national or social origin or economic condition, with consideration and privileges as are accorded to all other equally qualified and situated persons.

SECTION 2. Expect continuing employment up to the official age of retirement, in the absence of a showing of good cause through fair and equitable proceedings.

SECTION 3. Be fully informed, in writing, of all rules, regulations, terms or conditions of employment.

SECTION 4. Be assigned and advanced through salary increments at regular intervals, based on continuing satisfactory service, academic training, experience, and seniority when all other factors are equal; and to be paid a salary designed to attract and retain qualified and competent personnel.

SECTION 5. Be afforded an annual vacation with pay, released time for professional improvement without loss of pay, free service education, leave without impairment of economic or professional status for purposes including: service in public office, study, travel, maternity, paternity, sabbatical, and military service.

SECTION 6. Be provided retirement pay which will permit a decent, dignified and respectable standard of living.

SECTION 7. Be provided all public services and benefits, as are provided other similarly situated persons, including health care, unemployment and workmen's compensation, and social security.

SECTION 8. Seek and obtain supplemental employment as long as it does not interfere with teaching obligations.

SECTION 9. Have his class size and work load established on a basis commensurate with instructional objectives and procedures.

SECTION 10. Be afforded professionally competent administration and supervision designed to improve educational services.

SECTION 11. Be free to form, join or assist organizations without coercion, and to engage in activities for the purpose of collective negotiation or other mutual aid or protection.

SECTION 12. Have good faith collective negotiations, through representation of their own choice, on the terms and conditions of professional service, including instructional policy and other matters of mutual concern.

SECTION 13. Use school facilities for association activities when such use does not unduly interfere with instructional activities.

SECTION 14. Have recourse to conciliation, fact-finding, and mediation as a means of resolving negotiation impasse.

SECTION 15. Collectively refuse services in situations where established procedures for resolution of differences have failed and where the public health, safety, or welfare is not unreasonably endangered.

SECTION 16. Have recourse to fair and equitable procedures, to seek redress for adverse treatment, including the right to -

A. Be immediately apprised of any of his conduct which has been determined to be deficient by the administration, and to be given an opportunity to correct any such deficiencies before charges are made.
B. Be informed in writing of any charges against him and the grounds and evidence in support thereof when any adverse action is contemplated.
C. Be afforded an open hearing, or at the request of the charged party a closed hearing, before an impartial tribunal within a reasonable time, allowing sufficient time to prepare a defense, when charges are placed against him.
D. Be provided full access to all evidence in his case.
E. Require all testimony of witnesses by oath or affirmation.
F. Cross-examine all witnesses against him and to present witnesses and other evidence on his own behalf.
G. Retain counsel of his own choosing or to defend himself.
H. Be afforded compulsory process for obtaining witnesses within the school system and other evidence within the control of the school system.
I. Have evidence restricted to the charges.
J. Be provided findings of fact and law by the hearing tribunal.
K. Have a stenographic record of the hearing, findings, and decision.
L. Appeal to a clearly designated impartial authority or body.
M. Seek redress in court.
N. Be free from coercion or intimidation when he seeks redress or when he testifies or in any way participates in any proceeding, investigation, or hearing on his own behalf or on behalf of others.

SECTION 17. Have recourse to binding arbitration as a means of resolving grievance disputes.

ARTICLE IV

RIGHTS IN AN ASSOCIATION

Free association with other persons provides teachers a recognized means to raise the status of the profession and to establish a meaningful relationship with colleagues, administrators, other professionals, students and the public. In achieving and maintaining an influential and effective position to further the interests of the professional organization, the members adhere to the highest standards or responsibility and ethical conduct in administering organizational affairs.

Teachers encourage the free and full participation of the members in the affairs of their association. To be representative of, responsible and responsive to the membership, the organization provides all members with equal rights and privileges for self-government and the ability to influence decisions affecting the membership.

As a member of an organization, formed for professional and educational ressons, the teacher has the right to -

SECTION 1. Acquire and retain membership, being considered equally and without discrimination on the basis or race, color, creed, marital status, sex, age, religion, national or social origin, or economic condition.
SECTION 2. Withdraw from membership free from any punitive action.
SECTION 3. Participate freely, fully and equally with every other member in the affairs and processes of the organization.
SECTION 4. Express his views on organizational matters at meetings, subject to established any reasonable rules.
SECTION 5. Meet with other members, outside the organizational setting to express any views, arguments or opinions.
SECTION 6. Vote for organizational officers, either directly or through delegate bodies, in fair elections.
SECTION 7. Stand for and hold office subject only to fair qualifications uniformly imposed.
SECTION 8. Be provided periodic reports of the affairs and conduct of business of the organization.
SECTION 9. Be provided detailed and accurate financial records, audited and reported at least annually, and available to all members.
SECTION 10. Be free from unreasonable punitive action, coercion or restraint by the organization for the exercise of any rights to which the member is entitled.
SECTION 11. Seek redress through fair and equitable procedures, including the right of appeal, for:
  a. any adverse action taken against the individual member; and,
  b. any alleged violation of organizational rules, practices, and procedures.